IMPLEMENTATION OF INDIAN GAMING REGULATORY ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS

COMMITTEE ON
NATURAL RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

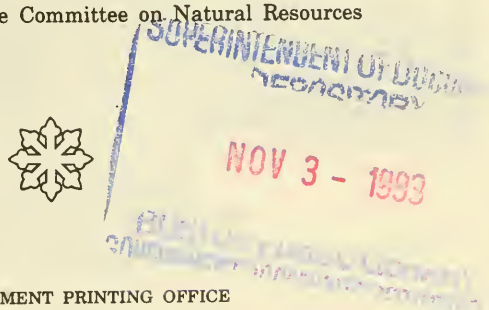
ON

IMPLEMENTATION OF PUBLIC LAW 100–497, THE INDIAN GAMING REGULATORY ACT OF 1988

HEARING HELD IN WASHINGTON, DC
JUNE 25, 1993

Serial No. 103–17, Part III

Printed for the use of the Committee on Natural Resources



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IMPLEMENTATION OF THE INDIAN GAMING REGULATORY ACT

FRIDAY, JUNE 25, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. The hearing will come to order.

This is the third in a series of oversight hearings on the implementation of the Indian Gaming Regulatory Act. In the past we have heard from Indian Tribes, the Interior Department, National Indian Gaming Commission, Members of Congress and Governors of States.

Today we will be taking testimony on how Indian gaming fits into the gaming and wagering industries. We will hear from experts on what the estimated amounts currently are with regard to money wagered and spent in Indian gaming establishments. We will see what percent of legalized gambling Indian gaming is today.

We will also hear from the regulators of pari-mutuel wagering and horse racing commissioners. In addition, persons representing the dog and horse racing industries are here today. Finally, the mayor of a town in Montana will explain his unique slant on Indian gaming.

Rest assured that this Committee intends to hear all points of view on these issues, and in future hearings I am sure we will take testimony from persons expressing views contrary to the perspectives of today's witnesses.

At this time, I request the summary of the Indian Gaming Regulatory Act be made part of the record.

[Prepared statement of Mr. Richardson follows:]

SUMMARY OF THE INDIAN GAMING REGULATORY ACT

On October 17, 1988, the President signed into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. 2701 et seq. The Act provides a system for the regulation of gaming on Indian lands by dividing gaming into three classes, establishing the National Indian Gaming Commission to regulate Class II gaming and authorizing compacts between tribes and states for the regulation of Class III gaming.

Class I Gaming

Class I gaming includes social or traditional gaming which is played in connection with tribal ceremonies or celebrations. Class I gaming is regulated exclusively by the tribes.

Class II Gaming

Class II gaming includes bingo and, if played at the same location as bingo, pull tabs, lotto, punch boards, tip jars, and instant bingo. Class II gaming also includes card games which are authorized by state law or not explicitly prohibited by state law and played at any location in the state. The card games must be played in conformity with state law or regulations regarding hours of operation and pot limits.

A tribe may engage in Class II gaming if the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity. Class II gaming is regulated by the National Indian Gaming Commission and the tribe or solely by the tribe if issued a certificate of self-regulation.

Class III Gaming

Class III gaming includes all gaming not included in Class I or Class II, such as casino-type games, gambling devices, pari-mutuel betting, etc.

Class III gaming is prohibited unless authorized by a tribal-state compact.

Class III Gaming and Tribal-State Compacts

Class III gaming is lawful when it is authorized by a tribal ordinance approved by the chairman of the Commission, is located in a state that permits such gaming (whether for charitable, commercial, or governmental purposes), and is conducted in conformance with a tribal-state compact which has been approved by the Secretary of the Interior.

The Act authorizes an Indian tribe and the state in which the tribe is located to enter a compact governing gaming activities. The compact may include provisions concerning: the application of

tribal or state criminal and civil laws directly related to gaming, the allocation of jurisdiction between the state and the tribe, state assessments to defray the costs of regulating the activity, taxation by the tribe in amounts comparable to state taxation, remedies for breach of contract, standards for the operation and maintenance of the gaming facility, and any other subjects related to the gaming activity.

The state is not authorized to impose a tax or assessment (except assessments that are agreed to) upon a tribe or person authorized by a tribe to conduct a gaming activity. The state cannot refuse to negotiate a compact based on its inability to impose a tax, fee, or other assessment.

The federal districts courts are vested with jurisdiction over: actions by Indian tribes arising from the failure of a state to negotiate with a tribe seeking to enter a compact or to negotiate in good faith, any action by a state or tribe to enjoin a Class III activity which violates the tribal-state compact.

A tribe may initiate an action for failure to negotiate in good faith against a state only after the passage of 180 days from the date the tribe requested the state to enter negotiations for a compact. If the court finds that the tribe has failed to negotiate in good faith, it shall order the state and the tribe to conclude a compact within 60 days.

If the state and the tribe fail to conclude a compact within the 60-day period, the parties are to submit a court-appointed mediator their last best offers for a compact.

The Secretary of the Interior is authorized to approve tribal-state compacts. The Secretary may disapprove a compact if it violates: the Act, any other federal law that does not relate to jurisdiction over Indian gaming, or the trust obligations of the United States to Indians. The compact takes effect once the Secretary publishes a notice in the Federal Register that the compact has been approved.

Gaming on Indian Lands after Enactment

Gaming is prohibited on land acquired by the Secretary in trust for an Indian tribe after the date of enactment of the Act unless: (1) the land is within or contiguous to the tribe's existing reservation boundaries; or (2) if an Oklahoma tribe, the lands are within the tribe's former reservation or the lands are contiguous to other land held in trust or restricted status for that tribe. This prohibition does not apply if the Secretary determines that a gaming facility would be in the best interests of the tribe and its members and would not be detrimental to the local community and the governor of the state concurs with the Secretary's determination. This prohibition also does not apply to

lands: taken in trust as part of a settlement of a land claim, comprising the initial reservation of a tribe federally acknowledged, or restored to a tribe that has been restored to federal recognition.

National Indian Gaming Commission

Composition

The Commission is composed of three full-time members with the Chairman appointed by the President and the other two members appointed by the Secretary of the Interior. Two of the three Commissioners must be members of federally recognized Indian tribes and no more than two members can be of the same political party. The Chairman of the Commission is Anthony J. Hope. The two Commissioners are Jana McKeag and Joel Frank.

Powers of Chairman

The Chairman is empowered to: (1) issue temporary closure orders; (2) levy civil fines; (3) approve tribal gaming ordinances; and (4) approve management contracts. The Chairman is also vested with such powers as the Commission may delegate.

Powers of the Commission

The Commission is vested with the following powers which cannot be delegated: (1) approve the annual budget; (2) adopt regulations for civil fines; (3) adopt an annual schedule of fees; (4) authorize Chairman to issue subpoenas; and (5) permanently close a gaming activity.

The Commission is vested with the following additional powers: (1) monitor gaming activities; (2) inspect gaming premises; (3) conduct background investigations; (4) inspect records related to gaming; (5) use the U.S. mails; (6) procure supplies; (7) enter into contracts; (8) hold hearings; (9) administer oaths, and (10) promulgate regulations.

Tribal Self-Regulation

A tribe may petition the Commission for a certificate of self-regulation if it has been engaged in a Class II activity continuously for a three-year period with at least one of the years being after the date of enactment of the Act and has otherwise complied with the Act. The Commission may issue the certificate if it is satisfied that the tribe has:

(1) conducted the gaming activity in a manner that has resulted in an honest accounting of all revenues, has a reputation for a safe and honest operation, and is generally free of evidence of criminal or dishonest activity;

(2) adopted and is implementing an adequate system for: accounting of revenues, investigation, licensing, and monitoring of employees, and investigation, enforcement, and prosecution for violations of its gaming laws; and

(3) conducted the gaming activity on a fiscally sound basis.

Management Contracts

The Chairman may approve a management contract if it provides: (1) adequate accounting procedures; (2) access by tribal officials to the gaming operations in order to verify the daily gross revenues and income; (3) a minimum guaranteed payment to the tribe that has preference over the retirement of development and construction costs; (4) a ceiling for the repayment of such costs; (5) a maximum term of 5 years or, at tribal request, 7 years; and (6) grounds and procedures for terminating the contract.

The management fee cannot exceed 30 percent of the net revenues unless the tribe requests a higher percentage. The Chairman may approve a higher percentage, not to exceed 40 percent, if a higher percentage is justified based on the capital investment and projected income.

All existing ordinances and management contracts, whether or not approved by the Secretary, must be submitted to the Chairman.

Commission Funding

The Commission is authorized to assess each game a fee which is based on a sliding fee scale from one-half of one percent to two and one-half percent on the first $1,500,000 of gross revenues and up to five percent of amounts over $1,500,000. The total amount of fees which the Commission can assess in any fiscal year is limited to $1,500,000. The Commission is authorized to request appropriations in an amount equal to the annual assessment. Section 8. Thus, the commission's annual budget cannot exceed $3,000,000 ($1,500,000 from assessments and $1,500,000 from appropriations). There is authorized to be appropriated in an amount not to exceed $2,000,000 for the first fiscal year.

OPENING STATEMENT OF CHAIRMAN RICHARDSON
Oversight hearing on Indian Gaming Regulatory Act
June 25, 1993

The Committee will come to order.

This is the third in a series of oversight hearings on the implementation of the Indian Gaming Regulatory Act. In the past, we have heard from Indian tribes, the Interior Department, the National Indian Gaming Commission, Members of Congress, and Governors of States. Today we will be taking testimony on how Indian gaming fits into the gaming and wagering industries. We will hear from experts on what the estimated amounts currently are with regard to money wagered and spent in Indian gaming establishments. We will see what percent of legalized gambling Indian gaming is today.

We will also hear from the regulators of parimutuel wagering and horse racing commissioners. In addition, persons representing the dog and horse racing industries are

here today. Finally, the Mayor of a town in Montana will explain his unique slant on Indian gaming.

Rest assured that this Committee intends to hear all points of view on these issues, and in future hearings I'm sure we will take testimony from persons expressing views contrary to the perspectives of today's witnesses.

There are some fundamental points about Indian affairs that I must make at the outset. 93,000 Indian people are homeless or living in substandard housing. Indian adolescents have a suicide attempt rate 4 times higher than other ethnic groups. Tuberculosis, diabetes, and fetal alcohol syndrome are of near epidemic proportions in Indian country. Unemployment rates continue to exceed 50% on reservations nationwide. These are pervasive problems which, in the age of deficit reduction, will probably never have sufficient federal

resources. Tribes nationwide are in desperate need of economic development.

There are three fundamental pillars of this body of Indian law. First, Indian affairs is strictly a federal function. The Congress has plenary power over Indian policy as it has since the days of treaties. Second, the states have always been excluded from the federal-tribal relationship by design. From the early history of the country it was clear that tribes and states were going to perpetually be in conflict. Third, tribes retain all sovereignty not expressly taken away by Congress. This was basically a real estate deal. The United States got the best piece of real property in the world and the tribes kept the right to control the small parcels they retained.

Unfortunately, many people misunderstand the concept of tribal sovereignty. It is the foundation for the government

to government relationship that exists between the U.S. and tribes. The Supreme Court has always acknowledged that tribes are sovereign. Tribes are domestic dependent nations and the United States is their trustee. The federal trustee is supposed to protect the tribes and make sure that their lands are productive. This has been the law of the land since the inception of this nation.

In 1988, Congress altered the three pillars of Indian law by passing the Indian Gaming Regulatory Act. The Act was based on the principles derived from the Supreme Court's ruling in the Cabazon case. I will summarize the complex Act by saying that the Congress divided Indian gaming in three different classes. Class I are traditional games regulated by tribes. Class II is bingo, pull-tabs and other games regulated by tribes and the National Indian Gaming Commission. Class III games are all other forms of gaming

and is regulated pursuant to the terms of a compact between tribes and States.

Under Section 2710, the Act specifies what tribes are mandated to do with the net revenues from Indian gaming. These revenues can only be used to fund tribal government operations of programs, to provide for the general welfare of the tribe and its members, to promote economic development, to donate to charitable organizations or to help fund local government agencies.

In short, Indian gaming is governmental gaming which provides revenues to run tribal governments and to provide for the great social welfare needs of tribes.

Today we will hear from industries that engage in the highly regulated gambling industry and do so for a profit. We will not hear from tribes or others engaged in governmental

gaming at this hearing, but we will be going to Green Bay on Sunday for a hearing on the State and tribal perspectives.

I ask that all witnesses summarize their statements. Your full written statement will be made part of the record which will be kept open for two weeks.

Mr. RICHARDSON. There are some fundamental points about Indian affairs that I would like to make, but in the interest of brevity, let me move ahead and recognize my very good friend, the gentleman from Nevada, Mr. Bilbray. I apologize to for being a little late, and I wish to thank him for coming. I commend his leadership on this issue and his sensitivity to the problems that affect not only the issue, but his State. He has been very forceful in his views but is working with me to try to deal with this issue.

Welcome.

STATEMENT OF HON. JAMES BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. BILBRAY. The fact is that you would come in on a Friday when everybody else is gone, and we appreciate having the hearing. I appreciate having the opportunity to testify before the subcommittee on the Indian Gaming Regulatory Act.

The Indian Gaming Regulatory Act of 1988 was intended to establish a balanced system for regulating all forms of Tribe-sponsored gaming. Unfortunately, the Act as written, put simply, does not work. Instead we have seen an incredible proliferation of gaming activities and resulting lawsuits around the country that are in part due to attempts to expand the law beyond its intent.

Mr. Chairman, I want first to dispel the belief that those of us who want to revisit this Act are pursuing it because of racism or possible economic gain as some suggest. There is no question that many Tribes are in desperate need of economic development projects, and the 1988 Act provided opportunity for such economic assistance.

Since enactment, many forms of Indian-approved gaming are practiced in more than 17 States. The Interior Department has authorized 75 successful Tribal/State compacts. *USA Today* newspaper recently reported that Indian gaming generates $5.8 billion in annual revenues and that is increasing on a daily basis.

It has been suggested that the efforts of those of us from Nevada and New Jersey are just trying to protect the gaming interests of our States. Let me tell you this is ludicrous.

Our desire to revisit the issue is due to a number of ethical and mismanagement concerns which have been brought to our attention with connection to the operation of Indian casinos around the country. As I mentioned, in the past few years, many States and Tribes have turned to gaming as a means of economic stimulus.

The primary purpose of enacting the Indian Gaming Regulatory Act was to install a mechanism for authorizing certain gaming operations on Indian lands that would respect the sovereignty of both the Tribes and States and this mechanism was centered around the compacting process, creating an agreement between the individual States and Tribes that would regulate Indian gaming where it was deemed legal.

However, there have been several cases where the compacting process has fallen down and not led to an agreement. In numerous instances, Tribes who had hoped to enter into gaming operations have sued the States for refusing to negotiate in good faith. Those Tribes are attempting to use the Federal courts to impose compacts on those States. The only group which has benefited from the

gridlock of compact legislation is the Washington, DC, law firms, whom I envy, who have shopped around for the most favorable courts in order to impose compacts on States, while at the same time making millions of dollars off the Indian Tribes.

In addition, without proper regulation to protect Indian enterprises from unscrupulous operators, Tribe-sponsored gaming could suffer greatly.

Last December the Inspector General of the Department of Interior reported that lax government oversight of Indian gaming operations has allowed certain operators to cheat Indian tribes out of millions of dollars in gambling revenues.

If you don't have a copy of that report, I would like to make it a part of the record.

Mr. RICHARDSON. Without objection.

[The information follows:]

U.S. Department of the Interior
Office of Inspector General

SURVEY REPORT

IMPLEMENTATION OF THE INDIAN GAMING REGULATORY ACT

REPORT NO. 93-I-349
DECEMBER 1992

(C-IN-BIA-007-92)

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Headquarters Audits
1550 Wilson Boulevard
Suite 401
Arlington, VA 22209

December 31, 1992

MEMORANDUM SURVEY REPORT

To: Assistant Secretary for Indian Affairs
Chairman, National Indian Gaming Commission

From: Assistant Inspector General for Audits

Subject: Final Survey Report on Implementation of the Indian Gaming Regulatory Act (No. 93-I-349)

INTRODUCTION

This report presents the results of our survey of the implementation of the Indian Gaming Regulatory Act. We performed the survey because allegations concerning contracts for gaming services indicated that excessive revenues were being realized by operating companies at the expense of the tribes and that other improprieties in certain gaming operations on Indian lands also existed.

Over 170 tribes have started high stakes bingo games and/or casino-type gambling, such as blackjack, poker, and slot machines. With the revenues received from gaming operations, some tribes have been able to build schools, hospitals, sewer and water systems, and other community facilities. Gaming revenues have also provided capital for financing new tribal industries. Further, gaming has provided employment for many Native Americans who live in economically depressed areas and overall has increased self-sufficiency on many Indian reservations.

However, our review concluded that there has been a lack of oversight of Indian gaming, which has adversely impacted the amount of proceeds being realized by some tribes involved in gaming operations. This occurred, in part, because the Act did not provide sufficient lead time for the Department of the Interior to establish a regulatory process for monitoring Indian gaming prior to the tribes' being given authority to proceed with gambling operations. Also by law, the Federal Government is severely limited in the amount of oversight it can provide over what is considered Class III gaming (casinos). In addition, the Bureau of Indian Affairs, the National Indian Gaming Commission, and some states have not been diligent or timely in the establishment and execution of oversight arrangements required by the Act to monitor casino gambling and bingo games. As a result, some gaming

establishments are operating in direct violation of the Act, and Indian tribes may be losing significant income because of fraud or abuse in an industry that is generating revenues of approximately $2 billion a year on Indian lands.

BACKGROUND

Historically, the majority of Indian reservations have been economically depressed and have experienced some of the highest rates of poverty, unemployment, and other adverse socioeconomic conditions in the country. During the 1980s, many Indian tribes became involved in gaming activities on Indian lands as a means of generating revenues for tribal governments. Consequently, after years of debate, the Congress passed the Indian Gaming Regulatory Act (Public Law 100-497, as amended) to provide policy and standards for the conduct of gaming on Indian lands. The Act was signed into law on October 17, 1988, and provides the regulatory framework for various forms of gambling on tribal lands. A primary purpose of the Act is to provide a statutory basis for tribal gambling activities as a means of promoting economic development, self-sufficiency, and strong tribal government.

The Act defines three classes of Indian gaming as follows:

- Class I gaming includes social or traditional gaming that is played in connection with tribal ceremonies or celebrations.

- Class II gaming includes bingo and, if played at the same location, pull tabs, lotto, punch boards, tip jars, instant bingo, and card games (such as poker) not played against the house when permitted by state law.

- Class III gaming includes card games, table games (such as blackjack and craps), slot machines, electronic or electromechanical facsimiles of games of chance, and parimutuel wagering. Class III gaming is lawful on Indian lands only if it is conducted in conformance with a tribal-state compact that has been approved by the Secretary of the Interior.

In Section 5 of the Act, the Congress established the National Indian Gaming Commission as the Federal agency with primary regulatory responsibility over Indian gaming operations. The Commission was included as part of the Department of the Interior but in reality operates as an independent agency. The primary role of the Commission is to issue regulations governing gaming activities, approve tribal ordinances for regulating Class II and Class III gaming, approve management contracts for Class II and Class III gaming, and monitor and regulate Class II gaming operations throughout the United States. The Commission is also responsible for investigating allegations of improper activities and conducting background investigations as necessary. When such investigations indicate a

violation of Federal, state, or tribal statutes, the Commission is required to refer the matter to the appropriate law enforcement officials. In that regard, Section 17 of the Act requires the Attorney General to investigate activities associated with gaming authorized by the Act that may be a violation of Federal law.

The Act gave the Secretary of the Interior interim responsibilities for the supervision of Indian gaming until the Commission was fully organized and had established the regulations needed for oversight of Indian gaming. During this interim period, the Secretary delegated oversight responsibilities to the Assistant Secretary for Indian Affairs. These responsibilities included but were not limited to ensuring that background investigations on casino management officials are performed and reviewing and approving compacts between the tribes and the states and contracts between the tribes and management companies.

Sections 11 and 12 of the Act authorize Indian tribes to enter into management contracts for the operation of Class II and Class III gaming activities. Section 12 further states that the Commission may approve a management contract only if it determines that the contract provides for (1) adequate accounting procedures and monthly verifiable financial reports, (2) tribal access to daily operations, (3) a minimum guaranteed payment to the Indian tribe that has preference over development and construction costs, (4) a ceiling for the repayment of development and construction costs, (5) a contract term not to exceed 7 years, (6) termination provisions, and (7) a reasonable fee that does not exceed 40 percent of the net revenues. Tribes often engage the services of management companies to provide for the establishment and management of these facilities. Because of the potential for substantial profits (up to 40 percent of the net income) that can be derived from these lucrative gaming operations, we found that individuals or enterprises with no expertise in gaming or construction and unverified financial backing have at times been offering tribes up-front payments of as much as $1 million to sign management contracts. As of October 1, 1992, we estimated that well over 200 contracts for management, leasing, or supply services had been entered into for Class II and Class III operations.

The framework for regulating Class III gaming is structured in accordance with compacts between the tribes and the states in which the games are operated. Compacts may include (1) provisions concerning criminal and civil laws directly related to gaming, (2) provisions for monitoring and allocating jurisdiction between the state and the tribe, and (3) standards for operating and maintaining a gaming facility. Overall, the Indian Gaming Regulatory Act recognizes Indian sovereignty over gaming and that Indian tribes have the right to regulate gaming activities on Indian lands subject to the provisions of the Act. The states' regulatory role in this process generally includes monitoring and inspecting operations of the various casino games.

As of November 1992, 171 tribes had initiated 257 gaming operations, including 84 Class III and 173 Class II establishments (Appendix 3), with revenues from these operations growing significantly. For instance, the revenues generated from Indian gaming in Minnesota alone totaled approximately $900 million during 1991. Tribal gaming throughout the country has had a major economic impact on the self-sufficiency of Indian people. In that regard, a 1991 study conducted by the Minnesota Indian Gaming Association, an association of tribes with gaming operations in Minnesota, concluded that since 1984, when Minnesota's first Indian gaming casino opened, tribal governments throughout the state recognized Indian gaming as a means of achieving what Federal policy had failed to accomplish over the past hundred years in terms of self-sufficiency and economic independence for Native Americans. "Tribes are investing gaming profits in education, housing, community projects, infrastructure improvements, health care, economic development, and increased law enforcement.

OBJECTIVE AND SCOPE

The objective of the survey was to determine whether Federal and state governments had taken appropriate action to implement the Indian Gaming Regulatory Act of 1988. To accomplish our objective, we contacted officials and requested data from 10 of the 12 Bureau of Indian Affairs area offices (Appendix 2), and we interviewed officials from Bureau headquarters, the National Indian Gaming Commission, the Department of Justice, Indian tribes, and state governments. The survey was performed from September through October 1992 at the Bureau of Indian Affairs and National Indian Gaming Commission offices in Washington, D.C., and the Bureau's Minneapolis Area Office and one tribal casino. Our survey was made in accordance with the auditing standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. Generally, our survey was limited to an overview of actions involved in establishing and monitoring Class II and Class III gaming and did not include reviews of gambling operations.

We also reviewed the Department of the Interior Annual Statement and Report, required under the Federal Managers' Financial Integrity Act, for fiscal year 1991 to determine whether any reported weaknesses were within the objective and scope of our survey. We found that no weaknesses on the subject were reported by either the Bureau of Indian Affairs or the Office of the Secretary.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has audited any Indian gaming operations or activities during the past 5 years.

RESULTS OF SURVEY

Approximately 260 gambling operations that generate revenues of $2 billion a year have been established on Indian lands with minimal or no effective oversight from Federal or state governments. As a result, substantial amounts of gaming revenues that should have been realized by the tribes are instead being siphoned off by enterprises hired to manage and equip the gaming operations. During our limited review, we identified situations where gaming revenues of over $12 million may have been improperly diverted from tribes to operators and suppliers, principally because of theft and mismanagement by contracted operators of gaming establishments.

The Indian Gaming Act of 1988 established a framework for joint Federal, state, and tribal control of Indian gaming through the approval, execution, and monitoring of tribal and state compacts and management contracts. In addition, the United States Code (25 U.S.C. 81) requires that the Secretary of the Interior approve all Indian contracts or agreements relative to Indian lands. The Assistant Secretary for Indian Affairs has interpreted this section to include management and equipment leasing contracts. However, the National Indian Gaming Commission has not yet issued all necessary regulations or assumed any regulatory responsibility, the Bureau of Indian Affairs has failed to exercise adequate supervision during the interim period, and some states have been reluctant to negotiate compacts with tribes. Consequently, of the 84 Class III establishments initiated by tribes, 33 are operating without approved tribal-state compacts (Appendix 4), and 8 are operating without approved management contracts (Appendix 5). Also, of the 173 Class II gaming establishments, at least 24 do not have approved management contracts (Appendix 6). Further, many equipment leasing contracts have also not been approved by the Bureau.

The operation of a Class III establishment without an approved tribal-state compact is a violation of the Act and places the operation in jeopardy of closure by the Department of Justice. This situation occurred in Arizona in May 1992, when law enforcement officials raided five bingo hall operations and seized 750 video poker machines because tribal-state compacts had not been approved. Therefore, the potential exists for tribes that are operating Class III casinos without valid compacts to forfeit significant revenues. We have also been informed by Bureau officials that besides the lack of many tribal-state compacts and approved management contracts, there are many more unapproved equipment leasing, supply, and service contracts in existence. The Bureau did not have a system to keep track of these service contracts. Also, the tribes have been reluctant to provide this information to the Bureau. We plan to identify the extent and the impact of unapproved service contracts in subsequent audits.

In addition to the unapproved compacts and contracts, we believe that many of the approved contracts do not comply with those provisions of the Act that require the

tribes to receive primary benefit from the gaming operation. Bureau officials said that contracts were approved if they were within the Act's broad guidelines relative to a maximum term of 7 years and a maximum fee percentage for the operators of 40 percent. Our survey showed, however, that economic evaluations of proposed operator costs were not being accomplished by the Bureau because it did not have a sufficient number of experienced personnel available in the field offices who could perform these evaluations or guidelines for performing financial analysis of contractor proposals. Therefore, the tribes may not have received an equitable share of revenue from the terms of the contracts. For example:

- We were informed by Bureau officials that a tribe may lose an estimated $4.5 million because of mismanagement on the part of the management company hired to operate its Class III casino. The Bureau of Indian Affairs did not approve the management contract because of controversies surrounding the firm. According to Bureau officials, the tribe had $2 million in savings prior to hiring the management company. However, after 1 1/2 years of gross mismanagement by the company hired to manage the gaming operation, the tribe was $2.5 million in debt. The tribe has since filed a lawsuit against the management firm in an attempt to recover some of its losses.

- Information provided by Tribal officials indicated that a casino leased 172 slot machines from a company that, as the tribe later discovered, was owned by the casino manager and the tribal attorney. This lease was not submitted to the Bureau for approval. Under the terms of the lease, the tribe paid the leasing company 37 percent of the gross income from those slot machines (the amount wagered less the amount of payback) each month for the rental of the machines. For the first 21 months of this 60-month closed-end[1] contract, the tribe paid rentals totaling over $2.5 million, which was over three times the estimated $800,000 acquisition cost of the equipment. The tribe discharged the casino manager after it learned of his involvement in the leasing company and hired a new manager who was attempting to cancel the remaining 39 months of the lease. The tribe may, however, still be liable for estimated monthly payments of $120,000 for the remaining 39 months if the contract cannot be canceled, or a total of $4.7 million. Consequently, this contract may end up costing the tribe an estimated $6.4 million more than if the equipment had been purchased outright. Further, the tribe received only a school bus as its share of gaming proceeds for the nearly 3 years the casino/bingo hall was run by the former manager because its 63 percent share of the gross revenue was used to pay operating costs and finance capital improvements. The leasing firm was also leasing equipment to at least two other Indian casinos. Those leases will be reviewed in subsequent audits.

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[1]Closed-end leases do not provide for a buyout at the end of the lease term.

- We were informed by Department of Justice officials that the owner of a business that provided check-cashing services for Indian casinos was indicted on a fraudulent check-cashing scheme that cost certain tribes at least $600,000. Ten Indian casinos in three states were victimized by this operation. The Bureau of Indian Affairs has no record of approving any of the contracts between the affected tribes and the check-cashing service. This check-cashing service was bonded for only $5,000, even though it was handling several hundred thousand dollars a week. If the Bureau had reviewed these contracts prior to their execution, this type of loss may have been prevented.

- We found that a corporation that was hired to operate an Indian casino that had no tribal-state compact pled guilty to a felony count of operating illegal gambling on an Indian reservation. The corporation was fined $100,000 and forfeited $308,000 in cash and seized equipment. In addition, each of the corporation's six stockholders pled guilty to one misdemeanor count under the Indian Gaming Regulatory Act and was fined $500.

- A financial investigation conducted by a tribe disclosed that a tribal gaming operations manager had mismanaged, overpaid, and failed to document nearly $250,000 in expenses during the 1 1/2 years the manager was employed by the gaming operation. The investigation disclosed that the manager lived in an apartment that was inappropriately paid for by the casino, was directly involved with over $70,000 in unsupported or duplicate travel cost reimbursements, and authorized tens of thousands of dollars for unsupported petty cash payments. In addition, the manager did not obtain competitive bids for over $700,000 of construction work, which the financial investigation determined to be substantially overpriced.

- A tribal official told us that a casino manager hired by a tribe was allowed to have exclusive control over operation of a bingo hall and a casino. When the tribal oversight committee attempted to assess operation of these activities, the casino manager refused to provide the information requested and the tribal Chairman did not support the committee's attempts to obtain this information. As a result, no one from the tribe but the tribal Chairman had any knowledge of casino operations. The casino manager kept his position for 2 years after he moved to the state capital. During the 2 years he was absent from casino operations, he was paid about $120,000 in salary and well over $80,000 for his personal expenses.

- Information provided by Departmental officials indicated that several tribes contracted with a single individual to manage a joint bingo hall operation. Apparently unknown to these tribes was the fact that the proposed manager had been accused by another tribal bingo hall of embezzling about $200,000 just prior to the tribes' signing the contract. The Bureau did not approve this contract; yet it took over 7 months to shut down the operation and file charges against the manager. Had the Bureau completed a thorough background investigation, as

required by the Act, the theft allegation would have likely been called to the attention of tribal officials and the contract would not have been awarded.

- We found that an Indian tribe signed a contract with a management company to finance, build, and manage a $10 million gaming/retail complex, even though the company had no apparent source of funding and no expertise in construction or casino management. The tribe hired a private investigator to conduct a background investigation, but before the investigation was completed, the tribe signed the contract. According to one Federal official, $5 million of the funding for this casino included "three negotiable instruments made out in German, drawn on a Swiss bank account, and payable to an Italian national." The international financial arrangements indicate the need for constant scrutiny to ensure that such arrangements are sound and protect the interests of Indian tribes.

Indian Gaming Regulatory Act

In May 1992, the Chairman of the Select Committee on Indian Affairs presented, to an oversight committee, testimony on implementation of the Indian Gaming Regulatory Act. The Chairman indicated that the National Indian Gaming Regulatory Act was passed as a compromise measure, which the Congress hoped would be mutually agreeable to the tribes and the states. The 1987 Supreme Court decision on Cabazon v. California, which ruled that the states could not control gaming on reservation lands, and the fact that some tribes were already engaged in gaming were factors contributing to the passage of the Act by Congress. Although the Act designated the Department as responsible for regulating Indian gaming until the Commission was operational, the Department did not have time to set up a regulatory authority because tribes were already involved in gaming activities. Furthermore, the Act contains provisions that share responsibility for regulation of casino gaming between the National Indian Gaming Commission, the Secretary of the Interior (Bureau of Indian Affairs), the various states that have negotiated tribal state compacts, and the Indian tribes on whose land the gaming facility is operated (Appendix 7). The Act gives the Commission responsibility for approving tribal ordinances and management contracts for Class II and Class III operations, whereas the Bureau is responsible for approving (1) the placing of land into trust for gaming purposes, (2) tribal-state compacts, and (3) equipment leasing and service contracts. In addition, according to the Act, the states are required to negotiate the compact with the tribe in which they agree on a plan to regulate Class III gaming activities. Hence, it is the states, not the Federal Government, that have primary oversight responsibilities over Class III gaming operations. Our review has shown, however, that states have often been reluctant to fulfill their responsibilities to regulate Class III gaming; consequently, many casinos have no independent oversight of operations, which increases the potential for fraud and abuse. This distribution of duties will require extensive coordination between the oversight entities, or some of the requirements may be inadvertently omitted to the detriment of the tribes.

Status of the Commission

The National Indian Gaming Commission is not yet fully operational 4 years after passage of the Act. Initial delays occurred because it took nearly 1 1/2 years to appoint the Commission Chairman and almost 1 year after that to appoint the two Commissioners. Further, the Commission has planned a cautious, methodical approach to its regulation of Indian gaming. Its first priority was to promulgate policy regulations, leaving management oversight as a Bureau responsibility. Commission members said that they soon hoped to finalize the last four of the total of six sets of regulations and then to direct their efforts to regulation. The Chairman of the Commission recently told the National Indian Gaming Association that Indian gaming would be better regulated than any other form of gaming in the country. He said that he expects the Commission to begin full operation by the end of 1992. However, our review showed that it may be at least an additional year until the Commission is fully operational. When operational, the Commission will investigate allegations of improper activities, conduct or cause to be conducted background investigations as necessary, and review and approve contracts between tribes and management companies.

In addition, the Commission will have operational oversight responsibility for all Class II operations and will collect fee assessments from those facilities to pay for the Commission's operations. In becoming operational, the Commission intends to use its $3 million budget and its estimated staff of 24 to oversee 173 Class II Indian gaming operations across the country. In contrast, we learned that the Nevada Gaming Commission, which oversees about 350 gaming operations in Nevada, has an $18 million budget and 394 employees. The New Jersey gaming regulators have responsibility for 12 gaming operations in Atlantic City and have a $60 million budget and 985 employees.

State Government Actions

Some states have been reluctant to negotiate compacts with Indian tribes because of insufficient state funding for regulatory activities and an expressed aversion to becoming involved in the internal affairs of tribal operations. The Act requires states to negotiate compacts with tribes in good faith. However, as of August 16, 1992, 16 lawsuits had been filed by tribes against 15 states for the failure to complete negotiations.[2] Consequently, at least 33 Class III gaming establishments are operating without approved compacts and an independent regulatory process.

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[2]On October 24, 1992, the Congress enacted a bill that allows Indian gaming to resume in Montana for a period of 6 months, while the tribes and the state negotiate compacts.

Departmental Oversight

The Department was not prepared for nor did it anticipate its role in supervising Indian gaming. It had no lead time to establish oversight capability because many tribes were already operating casinos and bingo halls at the time the Act was passed. Also, the Department said that it believed the Commission and states would be the primary regulators. As a result, the Department's planning and oversight activities did not progress at a sufficient pace to meet the needs of the tribes that were expediting the establishment of gaming operations. For example, as of February 1992, Indian tribes in Minnesota had 13 casinos and 15 bingo halls in operation, with over 9,189 slot machines and 494 blackjack tables and annual revenues estimated at $1.2 billion. Also, during this period, tribes in the States of Arizona, California, Connecticut, Michigan, Montana, South Dakota, Washington, and Wisconsin instituted sizable gaming operations. The total amount realized from Indian gaming operations in 1992 is estimated to be $2 billion. However, it was not until December 1991 that the Secretary established the Task Force on Indian Gaming Management and not until March 1992 that the Assistant Secretary for Indian Affairs issued the Task Force recommendations and additional guidelines for reviewing contracts, leases, subcontracts, assignments, or agreements submitted after March 6, 1992. Therefore, for 41 months (between October 1988 and March 1992), minimal formal guidance was provided to the Bureau area offices, and neither the Commission nor the Bureau was prepared to provide the tribes financial advice or assistance.

With little or no Federal guidance and oversight, many of the tribes were in a disadvantageous position when negotiating with companies that were hired by the tribes to manage gaming operations. This resulted in these companies' often taking advantage of the tribes by entering into inequitable agreements and contracts.

Recent Bureau Actions

At the time of our review, the Bureau was planning to create the Office of Indian Gaming Management. The Congress has provided funds of $550,000 and authorized the Bureau to reprogram additional funds to provide a fiscal year 1993 budget of $1.5 million for the Office of Indian Gaming Management. The Office will have regulatory responsibility and will be created in accordance with the Secretary's February 29, 1992, directive. The purpose of the Office will be to address and remedy problems related to unapproved gaming management contracts, conditional approval of management contracts without completion of background investigations, unapproved per capita distributions, approval of leases and assignments without compliance with environmental requirements, off-reservation land purchases, and other related gaming matters. According to the Bureau's justification, the Office will consist of 12 "highly skilled" individuals who have expertise in one or more of the following areas: tribal government, contracting, realty, accounting, financial

analysis, legal analysis, data/automated data processing, criminal investigations, and the environment.

Conclusion

Despite the significant problems related to Indian gaming, Indian gaming has had a positive impact on the economies of certain Indian tribes and state governments. For example, casinos and bingo halls in Iowa, Michigan, Minnesota, and Wisconsin have employed over 12,300 people, including 4,000 Indians. Because of such benefits, many of the tribes allow gaming halls and casinos to operate, even though they are aware that the operations are not in compliance with the Act. However, although some progress has been made in complying with the Act, Federal and state governments need to become actively involved in the oversight and regulatory process to ensure that Indians are the primary beneficiaries of gambling on Indian lands. Therefore, immediate action is needed to ensure that fair and equitable agreements are negotiated which protect the interests of Indian tribes and that effective enforcement mechanisms are in place and operating.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs, in coordination with the Chairman of the National Indian Gaming Commission:

1. Develop an action plan and oversight process that will (a) identify all Class II and Class III gaming operations; (b) prioritize gaming operations for review, concentrating on activities with unapproved compacts and management contracts; (c) expedite completion of approved management contracts and state-tribal compacts where such contracts and compacts have not been finalized; and (d) provide an orderly transition of responsibility for oversight of gaming from the Bureau to the Commission.

2. Ensure that the states and tribes are complying with gaming oversight provisions of their compacts as these provisions relate to the conduct of games, payout of machines, independent audits of financial records, and licensing of employees involved in gaming activities.

3. Allocate sufficient resources to the oversight and monitoring of Indian gaming to ensure that the Department of the Interior meets its responsibilities under the Indian Gaming Regulatory Act of 1988.

Bureau of Indian Affairs Response

The December 4, 1992, response from the Assistant Secretary for Indian Affairs (Appendix 8) indicated concurrence with Recommendations 1 and 3 and

nonconcurrence with Recommendation 2. The Bureau also provided comments on the draft report, which we considered in finalizing the report.

Recommendation 1. The Bureau stated that it had established a plan to identify all Class II and Class III gaming operations and to prioritize gaming operations for review. The Bureau also stated that its oversight of tribal gaming operations is "ongoing" and that it has scheduled several reviews of gaming operations designed to bring the operations "into compliance with the Indian Gaming Regulatory Act." The Bureau further stated that it has held periodic meetings with the Commission to provide for the "orderly transfer" of gaming functions to the Commission and that these meetings "will continue" through the "transition of gaming responsibilities."

Recommendation 2. The Bureau stated that the Act specifically "reposed total responsibility for regulation of gaming related activities on the tribes and the states by providing the compact process." The Bureau stated, however, that it would work with tribal and state officials to resolve gaming-related problems and improve tribal-state relationships. The Bureau also stated that it would work with the National Indian Gaming Association, the North American Gaming Regulators Association, the National Attorneys General Association, and other related organizations to improve tribal-state relations as they pertain to gaming operations.

Recommendation 3. The Bureau stated that it has developed and forwarded to the Department for approval an organizational structure to oversee the Department's gaming responsibilities. According to the Bureau, this structure will consist of 15 individuals and will be responsible for "policy development and oversight actions to insure that tribal-state compacts, distribution of per capita payments, land acquisitions for gaming purposes, and leases collateral to primary gaming activities are in compliance with the Act."

National Indian Gaming Commission Response

Even though our recommendations were addressed to the Bureau, the Chairman of the National Tribal Gaming Commission expressed general agreement with the recommendations in a December 4, 1992, memorandum (Appendix 9). The Commission's comments were also considered in preparing our final report.

Office of Inspector General Comments

The Bureau's response was sufficient for us to consider Recommendation 3 resolved and implemented, and additional information is needed for Recommendations 1 and 2 (see Appendix 10). Although the Bureau did not concur with Recommendation 2, it provided alternative actions to meet the intent of the recommendation.

In accordance with the Departmental Manual (360 DM 5.3), please provide us with your written comments to this report by March 5, 1992. Your comments should provide the information requested in Appendix 10.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

Harold Bloom

Harold Bloom

APPENDIX 1

CLASSIFICATION OF MONETARY AMOUNTS

Finding	Funds To Be Put To Better Use*
Gaming Revenues Lost	$12.4 million

*Amount represents non-Federal funds.

APPENDIX 2

BUREAU OF INDIAN AFFAIRS
OFFICES CONTACTED

Office	Location
Aberdeen Area Office	Aberdeen, South Dakota
Albuquerque Area Office	Albuquerque, New Mexico
Anadarko Area Office	Anadarko, Oklahoma
Billings Area Office	Billings, Montana
Eastern Area Office	Arlington, Virginia
Minneapolis Area Office	Minneapolis, Minnesota
Muskogee Area Office	Muskogee, Oklahoma
Phoenix Area Office	Phoenix, Arizona
Portland Area Office	Portland, Oregon
Sacramento Area Office	Sacramento, California

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APPENDIX 3

TRIBES WITH GAMING OPERATIONS

Area Office	Number of Tribes	Gaming Operations Class II	Class III	Total
Aberdeen	16	11	11	22
Albuquerque	10	9	8	17
Anadarko	21	19	0	19
Billings	5	3	15	18
Eastern	21	18	3	21
Minneapolis	30	49	33	82
Muskogee	10	17	0	17
Phoenix	12	7	2	9
Portland	23	20	6	26
Sacramento	23	20	6	26
Total	171	173	84	257

APPENDIX 4

STATUS OF TRIBAL/STATE GAMING COMPACTS

Area Office	Total Class III Gaming	Without Bureau Approved Compacts	With Approved Compacts
Aberdeen	11	2	9
Albuquerque	8	7	1
Anadarko	0	0	0
Billings	15	13*	2
Eastern	3	0	3
Minneapolis	33	7	26
Muskogee	0	0	0
Phoenix	2	0	2
Portland	6	4	2
Sacramento	6	0	6
Total	84	33	51

*Thirteen gaming operations are temporarily approved by an Act of Congress.

APPENDIX 5

STATUS OF MANAGEMENT CONTRACTS FOR CLASS III GAMING ESTABLISHMENTS OPERATED BY CONTRACTORS

Area Office	Total Class III Gaming	Less Establishments Operated by Tribe	Balance Requiring Contracts	Approved Contracts	Without Approved Contracts
Aberdeen	11	6	5	1	4
Albuquerque	8	6	2	2	0
Anadarko	0	0	0	0	0
Billings	15	11	4	1	3
Eastern	3	1	2	2	0
Minneapolis	33	27	6	6	0
Muskogee	0	0	0	0	0
Phoenix	2	2	0	0	0
Portland	6	4	2	2	0
Sacramento	6	0	6	5	1
Total	84	57	27	19	8

APPENDIX 6

STATUS OF MANAGEMENT CONTRACTS FOR CLASS II GAMING ESTABLISHMENTS OPERATED BY CONTRACTORS

Area Office	Total Class II Gaming	Less Establishments Operated by Tribes	Balance Requiring Contracts	Approved Contracts	Without Approved Contracts
Aberdeen	11	8	3	1	2
Albuquerque	9	5	4	2	2
Anadarko	19	14	5	1	4
Billings	3	1	2	1	1
Eastern	18	9	9	9	0
Minneapolis	49	36	13	9	4
Muskogee	17	13	4	3	1
Phoenix	7	4	3	0	3
Portland	20	15	5	4	1
Sacramento	20	8	12	6	6
Total	173	113	60	36	24

APPENDIX 7

OVERSIGHT OF INDIAN GAMING AS SPECIFIED IN THE INDIAN GAMING REGULATORY ACT

Commission	Bureau of Indian Affairs	States	Tribes
- Issue regulations	- Approve tribal land used for casinos	- Establish and implement compact with tribe	- Establish and implement compact with state
- Approve tribal ordinances	- Approve compacts	- Provide day-to-day casino oversight	- Make per capita distribution
- Approve management contracts	- Approve leases, supply and service contracts		-Provide day-to-day casino oversight
- Conduct background investigations on management officials	- Approve per capita distributions		
- Refer allegations			
- Monitor and regulate Class II gaming			

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 04 1992

Memorandum

To: Assistant Inspector General for Audits

From: Acting Assistant Secretary - Indian Affairs

Subject: Response to Draft Survey Report on Indian Gaming Activities (Assignment No. C-IA-BIA-007-92)

INTRODUCTION

This memorandum presents the response of the Bureau of Indian Affairs (BIA) to the above referenced draft survey report (Survey) dated October 29, 1992. Our response is provided in two parts: Part I consists of the BIA's comments relative to the survey report's factual analysis and conclusions made regarding Indian gaming operations. Part II responds to the OIG's recommendations and includes explanatory information.

PART I

The BIA is aware that a number of Class III gaming establishments are operating without approved compacts and management contracts. On page 5 of the Survey, the Office of the Inspector General (OIG) reports that "well over 200 contracts have been entered into for gaming operations." The BIA cannot verify this number. BIA survey data indicates the number to be 30 instead of 27 operations without approved compacts and 48 instead of 50 operations without approved management contracts. BIA survey data indicates 6 of the 48 are conditionally-approved management contracts.

The BIA does not have information to support the report's statement that gaming revenues of over $12 million may have been improperly diverted from tribes in favor of operators and suppliers.

In 1984, the BIA issued guidelines to the area directors in response to the rapid increase in high stakes bingo operations being opened by the tribes. These guidelines were revised in April 1985, and again on April 7, 1986. All of the guidelines were developed to govern the review and approval of bingo management contracts only and not casino-type gaming since Class III type gaming was not yet authorized. The 1986

guidelines continued to be used even after passage of the Indian Gaming Regulatory Act in 1988 (IGRA) even though by this time, many of the tribes had expanded their bingo operations to include Class III type gaming.

The statement that many of the approved contracts do not comply with provisions of the IGRA which require the tribes to receive primary benefit from the gaming operation is accurate. The primary reason this is true is because a number of these contracts were approved prior to passage of the IGRA and did not contemplate the requirements contained in the IGRA. Moreover, the majority of these contracts were for management of high stakes bingo operations. Since the passage of the IGRA in 1988, new forms of high tech gambling have been developed which were not available at the time these contracts were approved. The manufacturers of these new games promoted them aggressively as benign facsimiles of bingo which tribes believed were authorized as Class II type gambling. Consequently, tribes did not see the need to seek modifications to existing approved contracts to include them. Given the infancy of the IGRA and the lack of definitions classifying these new games, the BIA did not feel it had a basis on which it could properly disallow their use. Presently, there are several ongoing court cases which will, when finally decided, uphold or reject the NIGC's definitions of Class III gaming as being consistent with the IGRA.

The BIA believes that the survey report did not accurately portray the BIA's responsibilities. On page 4 the Report Survey states that the BIA has responsibility for approving tribal gaming ordinances until such time as the NIGC becomes fully operational. The IGRA does not give the Bureau independent authority to approve ordinances. Section 10 of the IGRA is clear that the Secretary can exercise only those authorities he had on the day before the enactment of the IGRA. As such, the BIA only has authority to approve tribal gaming ordinances if the tribe's governing documents require review and approval by the Secretary or his designated representative.

The survey report, on page 15, also contains inaccurate statements relative to certain responsibilities under the IGRA. The Report states: "The Act gives the Commission responsibility for approving tribal ordinances and management contracts for Class III operations, whereas the BIA is responsible for approving (1) the placing of land into trust for gaming purposes, (2) tribal-state compacts, and (3) management contracts." It is true that the NICG has responsibility for approving gaming ordinances and Class III management contracts. But, the NIGC <u>also</u> has responsibility to approve Class II management contracts. Once the NIGC is operational, the BIA will no longer have authority or responsibility for approval of any management contracts. The BIA will, however, have continued responsibility for the approval of off-reservation fee-to-trust acquisitions for gaming, approval of per capita distribution plans, approval of business leases and other agreements, approval of tribal-state compacts, and approval of any organic documents that require Secretarial approval. The BIA will also have continued responsibility for providing technical assistance to the tribes, at their request, for

approval of credit and financing requests, and training as deemed appropriate and requested by tribes and BIA staff, and for environmental reviews as may be appropriate or necessary.

The BIA concurs that Congress, in passing the IGRA in 1988, did not give the Department of Interior (Department) sufficient lead time to establish a regulatory authority before allowing tribes to begin gaming activities. With the passage of the IGRA, most assumed that regulation of Indian gaming would easily be accomplished. It was expected that the NIGC would be established quickly and regulations defining the scope of gaming allowed would be developed immediately. In retrospect, everyone would have been better served if an appropriate transition time had been established. Nonetheless, the BIA has established a regulatory capability to address the obligations set forth in the IGRA. The BIA continues to go forward.

Moreover, the tribes were also expected to comply with all of the requirements of the IGRA, even though they frequently voiced a lack of real understanding of the Act. Economic pressure to take advantage of gaming as an economic enterprise without significant gaming expertise too often forced tribes to negotiate contracts with operators under difficult and unfair circumstances. No one foresaw the implications and rapid expansion of high stakes gaming and consequently never considered the need for a moratorium to allow time for the logistical planning and establishment of the regulatory process.

The BIA agrees that states may appear to be reluctant to fulfill certain compact requirements. A result is that some casinos may have little or no oversight of operations by the state. Some states may have resisted negotiating compacts with Indian tribes because of insufficient state funding for regulatory activities and an expressed aversion to becoming involved in the internal affairs of tribal operations. The BIA, however, does not believe these reasons constitute the total basis for the state's reluctance to fulfill their compact requirements. The IGRA limits the extent of BIA involvement in the compact process. The BIA agrees that states and tribes should work together to provide more regulatory services, but it is not the BIA's function to intervene on either side in the compact process, or even to be involved in the negotiations between two governmental entities.

The BIA agrees that immediate action is needed to ensure that fair and equitable agreements are negotiated which protect the interests of Indian tribes, and, that effective enforcement mechanisms are in place and operating. To the extent feasible, the BIA will assist tribes, at their request, and provide such expertise and resources deemed necessary to enable tribes to negotiate on an equal basis with prospective contractors and operators. To this end, the BIA has established a Gaming Management Office to ensure that applicable laws and regulations are enforced, and the interests of the tribes are protected. The BIA gaming management office will employ staff with the necessary qualifications and experience to carry out this responsibility.

According to BIA data and information, $61.1 Million in Direct Loans, Guaranty Loans, and Indian Business Development Grants have been provided to 28 gaming enterprises. The repayment rate for these loans is exceptionally high and only one loan is currently delinquent. This loan is being modified to reflect problems that have arisen as a result of construction delays. The purpose of the Indian Financing Act is to provide economic assistance to Indian enterprises.

The BIA appreciates the OIG's comments regarding the positive investments and activities the tribes are funding with gaming revenues. The opportunity to break out of the poverty cycle is one that tribes have not been provided very often. Congress clearly intended this opportunity when they promoted gaming as a viable economic vehicle for the tribes. The BIA's support of tribal gaming operations through loans or guaranties must continue, especially in light of the positive effects such as creation of job opportunities, reductions in public assistance and the overall opportunities for a brighter future.

Revenue generated by Indian gaming establishments has, as the survey report states, provided a positive and viable source of funding for Indian tribes. Tribes have enhanced their governmental systems, increased and enhanced reservation infrastructures, built day care centers, fire departments, water and sewage treatment facilities, provided employment opportunities for Indians and non-Indians, provided educational and other training opportunities for members, and provided for investment in other economic development ventures, including purchasing additional land for the tribes.

PART II

RECOMMENDATION 1: Develop an action plan and oversight process that will (a) identify all Class II and Class III gaming operations; (b) prioritize gaming operations for review, concentrating on illegal and unapproved activities; and (c) provide an orderly transition of responsibility for oversight of gaming from the BIA to the NIGC.

RESPONSE: The BIA concurs. Since March 1992 the BIA has initiated a series of actions to identify all Class II and III gaming operations and to prioritize gaming operations for review. An action plan has been established, setting forth objectives and time lines for completion. The plan is updated and amended as new tasks are added or completed and to account for additional or decreased staff.

Additionally, oversight is ongoing. The BIA has, on a regular basis, identified changes in the gaming activity and provided assistance to the BIA staff and the tribes regarding changes in the activity. The BIA is working closely with the OIG to share information regarding identified games, updating of information regarding contracts, compacts and management firms.

The Central Office gaming staff has responded to area, field and tribal requests for technical assistance and training on gaming management issues and problems. Central Office gaming staff has scheduled several on-site visits to assist area/field staff with review of on-going gaming operations and to develop corrective/remedial actions to bring such operations into compliance with the IGRA.

The BIA's plan to provide for the orderly transfer of gaming functions to the NIGC, has consisted of periodic meetings between Central Office and NIGC staff to discuss mutual concerns, problems and the eventual transfer of primary gaming functions. Central Office staff have begun the collection and filing of management contracts, ordinances and related documents to prepare such documents for easy transfer to the NIGC. Meetings will continue to be held with NIGC staff to provide for an orderly transition of gaming responsibilities.

RECOMMENDATION 2: Ensure that the states and tribes are complying with gaming oversight provisions of their compacts as these provisions relate to conduct of games, payout of machines, independent audits of financial records and licensing of employees involved in gaming activities.

RESPONSE: The BIA does not concur. The BIA believes the IGRA specifically reposed total responsibility for regulation of gaming related activities on the tribes and the states by providing the compact process. We believe the IGRA provided both the tribes and states an equal opportunity and responsibility as sovereign governments to

insure that compact provisions are enforced and complied with by both sides. BIA involvement to insure compliance with compact provisions would be difficult and impractical.

To the extent feasible, the BIA is willing to work with tribal and state officials to facilitate meaningful discussions on problematic issues and to enhance the tribal-state relationship. In addition, the BIA will interact/liaison with the National Indian Gaming Association, the North American Gaming Regulators Association, the National Attorneys General Association and other gaming industry-related organizations to improve tribal-state relations as such pertain to gaming operations.

RECOMMENDATION 3: Allocate sufficient resources to the oversight and monitoring of Indian gaming to ensure that the Department meets its responsibilities under the IGRA.

RESPONSE: The BIA concurs. The BIA has responded to the Secretary's Directive to establish a regulatory unit within the BIA to oversee the Department's gaming-related responsibilities by developing the required justification to authorize an organizational modification. The organizational modification including staffing patterns and functional statements have been forwarded to the Department for review and approval. Position descriptions, office space acquisition, budget projections and other logistical plans have been finalized and are capable of immediate implementation upon approval of the organizational modification. A staff of 15 people is proposed and is considered to be sufficient to carry out the Department's residual responsibilities under the IGRA upon transfer of primary gaming functions to the NIGC. The small staff will carry out policy development and oversight actions to insure tribal-state compacts, distribution of per capita payments, land acquisitions for gaming purposes, and leases collateral to primary gaming activities are in compliance with the IGRA.

Upon approval of the organizational modification establishing the Indian Gaming Management Office, permanent qualified staff will be recruited and selected. It is anticipated that the permanent office will be established in the very near future and the BIA can move forward to staff the Office. It is anticipated that a number of positions will be filled by the end of January 1993. The office will be fully operational by May 1993.

The responsible person for this action is Hilda Manuel, Acting Staff Director, Indian Gaming Management Office. Ms. Manuel can be reached at (202) 219-0994.

APPENDIX 9
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NATIONAL
INDIAN
GAMING
COMMISSION

December 4, 1992

To: Harold Bloom
Assistant Inspector General for Audits

From: Anthony J. Hope, Chairman
National Indian Gaming Commission

Subject: Draft Survey Report on Indian Gaming Activities

This responds to your request to provide you with our written comments on the Draft Survey Report on Indian Gaming Activities, including whether the National Indian Gaming Commission agrees or disagrees with the findings and recommendations contained in the Report.

The Commission shares the concerns expressed in the Report that some tribal gaming operations are not fully complying with the Indian Gaming Regulatory Act (IGRA) and that some tribes may be losing revenues because of fraud or abuse. The Commission also agrees that everyone involved in the regulation and oversight of Indian gaming, including the tribes themselves, can do a better job in insuring compliance with the IGRA. The Report assumes, however, that the Secretary of the Interior is vested with broad authority to regulate all Indian gaming. Furthermore, the Report suggests that the Commission could be doing more to regulate Indian gaming than promulgate regulations.

In the introductory paragraph, the Report states

> . . . the Act did not provide sufficient lead time for the Department of the Interior to establish a monitoring and oversight capability prior to the tribes' being given authority to proceed with casino gaming.

This statement fails to recognize some basic facts:
(1) Indian gaming existed prior to the passage of the IGRA;
(2) Indian gaming was not authorized and created by the IGRA but was subjected to regulatory oversight and control;
(3) Indian gaming was and continues to be primarily the responsibility of the tribes; and

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(4) the Justice Department (U.S. Attorneys and FBI) were given authority to investigate and prosecute violations of the IGRA.

In addition, the Report uses terms and attributes authorities and responsibilities that are not always consistent with the IGRA and the regulations. For example:

- The Report uses the term "casino gaming" to refer to both class II and class III gaming (page 2).
- The Report attributes class III contract approval to both the Commission and the BIA (page 15). Once the Commission's management contract regulations take effect, the Chairman will have the exclusive authority to review and approve all gaming management contracts.
- Contrary to the Report, the Commission will not "conduct background investigations on casino management officials (page 17 and 27).

The Secretary of the Interior's interim authority to regulate Indian gaming activities is limited to the authority he exercised prior to the enactment of the IGRA. See 25 U.S.C. § 2709. That authority is limited to reviewing gaming contracts under 25 U.S.C. § 81 and leases of Indian land under 25 U.S.C. § 415. The authority of the Secretary to monitor Indian gaming and to take enforcement actions for violations of the IGRA acting pursuant to sections 81 and 415 is far from certain.

The Commission strongly disagrees with the Report's conclusion at page two that the Commission has not been diligent in exercising its responsibilities under the IGRA. The Report states (at page 16) that the Commission is not yet fully operational four years after passage of the IGRA. The Report acknowledges the delays in the appointment of the Commissioners, but appears to be critical of our "cautious, methodical approach to [the] regulation of Indian gaming." This leaves the erroneous impression that either: (1) there was another regulatory approach available to the Commission other than rulemaking or (2) the Commission is taking too long to issue regulations.

The IGRA clearly recognized that the Commission would need to promulgate regulations before it could begin to regulate. Thus, Congress vested in the Secretary of the Interior the interim authority to regulate Indian gaming "until such time as the Commission is organized and prescribes regulations." 25 U.S.C. § 2709. More importantly, if the Commission had proceeded to carry out its responsibilities under the IGRA without first engaging in rulemaking, it would have been in violation of the Administrative Procedure Act, 5 U.S.C. § 553, and all of the Commission's actions would be subject to challenge. The Commission proceeded in the only lawful manner available.

Since the appointment of the third Commissioner in April of 1991, the Commission has promulgated six sets of substantive regulations (not policy regulations as the Report states) concerning: fee assessments, definitions, tribal ordinances, Privacy Act, compliance and enforcement, and management contracts. The Commission has promulgated these essential regulations in an efficient and timely manner. It is doubtful that the Commission could have proceeded any faster in the promulgation of regulations unless it had been vested with emergency rulemaking authority. The fee assessment and definition regulations are in effect, and the final regulations on tribal ordinances, Privacy Act, and compliance and enforcement are now under review at the Office of Management and Budget. The Commission anticipates completing its work on the management contract regulations -- the last essential set of regulations that will enable the Commission to become operational -- by December 15, 1992.

Promulgating regulations is but one of many vital functions the Commission has accomplished since the appointment of the Chairman in May of 1990. Like any new agency, the Commission has had to contend with many necessary but time-consuming tasks, such as acquiring office space, furniture, equipment, supplies, and personnel and developing operating policies, procedures and systems. Moreover, the Commission members and staff have met extensively with Members of Congress and their staffs, Indian gaming tribes, Indian gaming associations, state gaming regulators, governors, state attorneys general, federal, state, and tribal law enforcement agencies, United States Attorneys, and many others. These meetings have been vitally important. We have educated others on the IGRA and the role of the Commission and have developed invaluable relationships with all those that have a role in implementing the IGRA and making it work as Congress intended.

The Report also fails to recognize that policing tribal-state compacts falls to neither the Commission nor the Secretary. That is the responsibility of the tribe and the state. Thus, the IGRA provides that a compact could include a provision concerning remedies for breach of the agreement, 25 U.S.C. § 2710(d)(3)(C)(v). The IGRA also vests the U.S. district courts with jurisdiction over actions brought by a tribe or a state to enjoin class III gaming activities that are conducted in violation of a tribal-state compact. Section 2710(d)(7)(A)(ii).

Although they appear to be directed to the BIA rather than to the Commission, we have reviewed your specific recommendations and offer the following comments:

1. (a) The BIA has told the Commission that it will provide this information.

(b) The Commission would welcome whatever information the BIA has that would help the Commission prioritize gaming operations for review. Additionally, information regarding class III operations should be provided to the relevant state authorities and to the Department of Justice.

(c) The Commission will be prepared to assume its oversight responsibilities for class II gaming as soon as its regulations are effective. The Commission would welcome whatever additional information and assistance the BIA can provide.

2. The Commission does not have the responsibility or authority to ensure that the states and tribes are complying with gaming oversight provisions of their compacts.

3. This comment does not apply to the Commission; it deals with the allocation of Department of the Interior resources.

We want to thank the you and the Inspector General for sharing the draft of your proposed Report with us in advance. We hope you find our comments helpful.

Should you have any questions or want to discuss the Report or our observations further, please call Fred Stuckwisch or me at 202/632-7003.

APPENDIX 10

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
1	Management concurs; additional information needed.	Provide a copy of the Bureau's action plan to identify all Class II and Class III gaming operations and to prioritize gaming operation for review.
2	Management concurs; additional information needed.	Provide an action plan for the Bureau's efforts to facilitate meaningful discussions on problematic issues and to improve tribal-state relationships, including target dates and titles of officials responsible for implementation.
3	Implemented.	No further action is needed.

ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO THE OFFICE OF INSPECTOR GENERAL BY:

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Calling:

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U.S. Department of the Interior
Office of Inspector General
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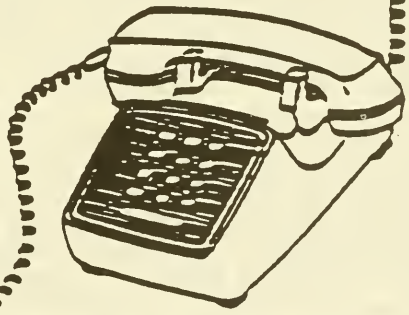

Mr. BILBRAY. The limited review of tribal casinos by the Inspector General found at least $12 million diverted from Tribes due to theft and mismanagement.

In one case, a Tribe signed a contract to lease slot machines for $6.4 million more than it would have paid if it had bought the machines. The company leasing the equipment to the Tribe and cheating them out of their rightfully earned profits was owned by the casino manager and the tribal attorney.

In another case, a Tribe stands to lose an estimated $4.5 million through gross mismanagement by the company hired to operate its casino. That is in the record. These are not my statements. These are statements made by the Interior Department.

The Inspector General has also found the Indian Gaming Commission has been slow in organizing. The five-year-old agency has not yet assumed any regulatory responsibility, and has therefore failed to exercise any, much less anything approaching adequate supervision.

That is not the case in Nevada.

We know something about gaming. We were the first State to legalize gambling in the thirties. Let me give you an idea of what we in Nevada consider adequate supervision.

The Nevada Gaming Control Board employs 372 full-time equivalent positions. Annually more than a hundred of those employees work in the Audit Division and another hundred in the Enforcement Division. That 372 employees does not include attorneys assigned to that department either by the Attorney General's Office or working within the Department itself.

A staff that large is required just for the administrative and investigative support. Those employees are tasked with tracking the more than $5.5 billion in gaming revenue that is brought into the State of Nevada alone by more than 2,400 licensees.

If it takes that many people to supervise gaming operations in one State, can you imagine the staff needed to cover the entire nation and the massive revenues Indian gaming would generate? You can imagine the number needed, then realize that the current staff tasked with that responsibility comes to just six people.

Each Nevada gaming employee regulates an average of six operators. Let me make that clear. One investigator in the Gaming Division monitors six gaming operations, and we have a lot of small operators too, because in Nevada even small operations like the 7-Eleven sometimes has four to five slot machines.

Each casino is assigned individual agents that monitor that on a daily basis. They go in clandestinely and look at what is going on there. They are there not only to protect the clients that are gambling there to make sure they are not cheated by the house, but also to make sure that the house is protected because there are people that cheat the house as well as those that cheat the customers.

In this massive responsibility, Federal regulators have had the additional burden of having to work with casino operators who, hired by the individual Tribes, undergo absolutely no background investigation at all. I can tell you in the State of Nevada we have a tremendous investigation procedure, and the people being inves-

tigated also have to pay for their investigation and are billed as they go through the investigation process.

We go into every aspect of their life, back to where they were born to present day, who their associates are, who they have dealt with, who they belong to organizations with, do they belong to a country club that is infiltrated heavily by organized crime, and if so, do they associate with those people at the club? Do they have dinner with those people?

We know more about a lot of the people at the end of our investigation procedure than they know about themselves. As an administrative law attorney, when I was practicing law before I was elected to Congress, many times people that filed for gaming applications were surprised because acts that took place as teenagers came out that they didn't remember or had put out of their minds.

Nevada requires this extensive background check, but in the Indian gaming area nothing like that happens. I can tell you that many people that would not and could not be licensed in the State of Nevada are out there soliciting Tribes to run their casinos and be involved.

If the Federal Government is truly going to regulate Indian gaming, they will have to have hundreds of investigators and every single person involved in gaming on the tribal Reservations will have to have a background check both financially and for involvement with others to make sure those people are not going to be there corrupting the process.

These concerns that I am voicing over the current Indian Gaming Regulatory Act are not simply those of two States making their living from gambling. As I have stated, most of our casinos are now involved with Tribes across the country to expand gambling. What I am afraid of as a Congressman from a State that is involved in legalized gambling is that such scandals are going to blow over non-regulated gambling because it is a potential for a time bomb to go off in these States.

What is going to happen is the Federal Government is going to say we have to either outlaw gambling throughout this country or we are going to have to get into a position where we are going to have to get into every single State and regulate it even heavier than it is today.

In Nevada because of our over 50 years of regulating gambling, we believe we can do it better than the Federal Government can do it. But if they don't do it on the tribal Reservations and in other areas of legalized gambling, believe me, future Congresses are going to get involved in this heavily.

You may have a letter from the Secretary of the Treasury to Senator Richard Bryan dated June 22, 1993. In the letter it mentions the fact that Secretary of Treasury, Mr. Bentsen, is very, very concerned that the unregulated gaming that is going on in the tribal Reservations is a potential problem for money laundering by organized crime, both in drug money and other activities.

That letter, if you don't have it, I would like to have made part of the record.

Mr. RICHARDSON. Without objection.

[The information follows:]

THE SECRETARY OF THE TREASURY
WASHINGTON
June 22, 1993

The Honorable Richard H. Bryan
United States Senate
Washington, D.C. 20510

Dear Dick:

Thank you for your recent letter in which you raised a number of issues concerning the applicability of the Bank Secrecy Act to Indian casinos operated under the authority of the Indian Gaming Regulatory Act.

I am pleased that you found Treasury staff responsive to your concerns over how the Department's new Bank Secrecy Act regulations may affect Nevada casinos. Let me assure you that the Department remains committed to working with Nevada gaming officials, the casino industry and your office with respect to the implementation of these regulations.

The reporting and recordkeeping requirements of the Bank Secrecy Act have been applied to casinos because it was determined the records and reports would be useful to the Government's efforts to detect money laundering, tax evasion and other financial crime. Casinos, as cash intensive businesses offering many financial services, had been used in the past for drug money laundering and other criminal purposes. It is our view that without adequate recordkeeping, internal controls, and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering.

Section 20(d) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(d)) specifically subjects Indian gaming to the reporting requirements of section 6050I of the Internal Revenue Code. When enacting section 6050I, we believe Congress intended that businesses report cash transactions under either the Bank Secrecy Act or section 6050I, but not both. Because the Congress, in enacting section 20(d), stated that section 6050I reporting applies to Indian gaming, Treasury believes that legislation is required to apply the requirements of the Bank Secrecy Act, instead of section 6050I, to Indian gaming.

From a law enforcement perspective, we believe Indian gaming establishments should be subject to reporting and recordkeeping requirements comparable to those applicable to non-Indian gaming

establishments. For this reason, the Department would support legislation to authorize the Secretary of the Treasury to prescribe by regulation recordkeeping and reporting requirements for appropriate Indian gaming operations. The Department would be pleased to provide your staff with drafting assistance to develop the necessary legislation.

We look forward to working closely with you, other interested members of Congress, and representatives of the Indian community to address any issues that may be raised during consideration of the legislation by the Congress.

Please let me know if you have any further questions or require additional information.

Sincerely,

Floyd

Floyd Bentsen

Mr. BILBRAY. I think it is very important to recognize that in the State of Nevada we have reporting of cash transactions, we have reporting of any sort of suspicious looking activity. That is not true in the tribal Reservations. I think to protect the Tribes, because of what happened in Nevada in the 1940s, if you saw the movie *Bugsy,* what happened there was organized crime decided to buy individual casinos.

They built the Flamingo, other mobs built the Star Dust and other casinos. Each mob owned its own casino in Las Vegas. They wanted that not so much at that time for the gaming revenue. It was a perfect place to bring in their ill-gotten proceeds, put it through as legitimate money and pay taxes on it and use that money.

It has taken us 50 years to weed out this type of influence, to bring in and clean up the image of southern Nevada. New Jersey goes through it every day in fighting this problem. If you think that they are not out there looking at the Tribes and trying to get involved with the Tribes, think again. And Indian Tribes are just like everybody else—there are good people and there are bad people and there are average people.

There are some that are corruptible and some that aren't. Believe me they will find the corruptible ones and the billions of dollars that are made out of the drug trade and other illicit activities will be perfect for these Tribes to have.

If we don't get in there and clean up this activity and make sure that where Indian gaming is permitted and where it has to be regulated, it has to be regulated heavily for the protection not only of the consumer and the people of this country, but for the Tribes themselves.

We want to make it clear that the Nevada Resort Association representing the gaming interests of the State has taken no stand either pro or con on Indian gaming. All we are asking this committee is that this thing is broken. It is not working correctly. You have to get more investigators in, and you have to get enough revenue generated from the Tribes to pay for an adequate investigation staff.

Thank you.

[The prepared statement of Mr. Bilbray follows:]

STATEMENT BY REP. JAMES BILBRAY
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
JUNE 25, 1993

I APPRECIATE MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE HAVING THE OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE ON THE INDIAN GAMING REGULATORY ACT (IGRA).

THE INDIAN GAMING REGULATORY ACT OF 1988 WAS INTENDED TO ESTABLISH A BALANCED SYSTEM FOR REGULATING ALL FORMS OF TRIBE-SPONSORED GAMING. UNFORTUNATELY, THE ACT AS WRITTEN, PUT SIMPLY, DOES NOT WORK.

INSTEAD, WE HAVE SEEN AN INCREDIBLE PROLIFERATION OF GAMING ACTIVITIES AND RESULTING LAWSUITS AROUND THE COUNTRY, THAT ARE IN PART DUE TO ATTEMPTS TO EXPAND THE LAW BEYOND ITS INTENT.

MR. CHAIRMAN, I WANT TO FIRST DISPEL THE BELIEF THAT THOSE OF US WHO WANT TO REVISIT THE ACT ARE PURSUING IT BECAUSE OF RACISM OR POSSIBLE ECONOMIC GAIN AS SOME ARE SUGGESTING. THERE IS NO QUESTION THAT MANY TRIBES ARE IN DESPERATE NEED OF ECONOMIC DEVELOPMENT PROJECTS AND THE 1988 ACT PROVIDED OPPORTUNITY FOR SUCH ECONOMIC ASSISTANCE.
SINCE ENACTMENT, MANY FORMS OF INDIAN-APPROVED GAMING ARE PRACTICED IN MORE THAN 17 STATES. THE INTERIOR DEPARTMENT HAS AUTHORIZED 75 SUCCESSFUL TRIBAL-STATE COMPACTS. USA TODAY NEWSPAPER RECENTLY REPORTED INDIAN GAMING GENERATES $5.8 BILLION IN ANNUAL REVENUES.

IT HAS ALSO BEEN SUGGESTED THAT THE EFFORTS OF THOSE OF US FROM NEVADA AND NEW JERSEY ARE JUST TRYING TO PROTECT THE GAMING INTERESTS IN OUR STATES. SUCH A STATEMENT IS LUDICROUS. OUR DESIRE TO REVISIT THIS ISSUE IS DUE TO A NUMBER OF UNETHICAL AND MISMANAGEMENT CONCERNS THAT HAVE BEEN BROUGHT TO OUR ATTENTION WITH CONNECTION TO THE OPERATION OF INDIAN CASINOS AROUND THE COUNTRY.

AS I MENTIONED, IN THE PAST FEW YEARS MANY STATES AND TRIBES HAVE TURNED TO GAMING AS A MEANS OF ECONOMIC STIMULUS. THE PRIMARY PURPOSE

OF ENACTING THE INDIAN GAMING REGULATORY ACT WAS TO INSTALL A MECHANISM FOR AUTHORIZING CERTAIN GAMING OPERATIONS ON INDIAN LANDS THAT WOULD RESPECT THE SOVEREIGNTY OF BOTH THE STATES AND THE INDIAN TRIBES. THIS MECHANISM WAS CENTERED AROUND THE COMPACTING PROCESS, CREATING AN AGREEMENT BETWEEN THE INDIVIDUAL STATES AND TRIBES THAT WOULD REGULATE INDIAN GAMING WHERE IT WAS DEEMED LEGAL.

HOWEVER, THERE ARE SEVERAL CASES WHERE THE COMPACTING PROCESS HAS FALLEN DOWN AND NOT LED TO AN AGREEMENT. IN NUMEROUS INSTANCES, TRIBES WHO HAD HOPED TO ENTER INTO GAMING OPERATIONS HAVE SUED STATES FOR REFUSING TO NEGOTIATE IN GOOD FAITH. THOSE TRIBES ARE ATTEMPTING TO USE THE FEDERAL COURTS TO IMPOSE COMPACTS ON THESE STATES. THE ONLY GROUP WHICH HAS BENEFITED FROM THE GRIDLOCK OF COMPACT LITIGATION IS THE WASHINGTON D.C. LAW FIRMS WHO HAVE SHOPPED AROUND FOR THE MOST FAVORABLE COURTS IN ORDER TO IMPOSE COMPACTS ON STATES WHILE AT THE SAME TIME MAKING MILLIONS OFF OF THE INDIAN TRIBES.

IN ADDITION, WITHOUT PROPER REGULATIONS TO PROTECT INDIAN GAMING ENTERPRISES FROM UNSCRUPULOUS OPERATORS, TRIBE-SPONSORED GAMING COULD SUFFER GREATLY. LAST DECEMBER, THE INSPECTOR GENERAL OF THE DEPARTMENT OF INTERIOR REPORTED THAT LAX GOVERNMENT OVERSIGHT OF INDIAN GAMING OPERATIONS HAS ALLOWED CERTAIN OPERATORS TO CHEAT INDIAN TRIBES OUT OF MILLIONS OF DOLLARS IN GAMBLING REVENUES.

THE LIMITED REVIEW OF TRIBAL CASINOS BY THE INSPECTOR GENERAL FOUND AT LEAST $12 MILLION DIVERTED FROM TRIBES THROUGH THEFT AND MISMANAGEMENT. IN ONE CASE, A TRIBE SIGNED A CONTRACT TO LEASE SLOT MACHINES FOR $6.4 MILLION MORE THAN IT WOULD HAVE PAID IF IT HAD BOUGHT THE MACHINES. THE COMPANY LEASING THE EQUIPMENT TO THE TRIBE AND CHEATING THEM OUT OF THEIR RIGHTFULLY EARNED PROFITS, WAS OWNED BY THE CASINO MANAGER AND THE TRIBAL ATTORNEY.

IN ANOTHER CASE, A TRIBE STANDS TO LOSE AN ESTIMATED $4.5 MILLION THROUGH GROSS MISMANAGEMENT BY THE COMPANY HIRED TO OPERATE ITS CASINO.

THE INSPECTOR GENERAL HAS ALSO FOUND THAT THE INDIAN GAMING COMMISSION

HAS BEEN SLOW IN ORGANIZING. THE 5 YEAR OLD AGENCY HAS NOT YET ASSUMED ANY REGULATORY RESPONSIBILITY AND HAS THEREFORE FAILED TO EXERCISE ANY, MUCH LESS, ANYTHING APPROACHING ADEQUATE SUPERVISION. THAT IS NOT THE CASE IN NEVADA.

WE KNOW SOMETHING ABOUT GAMING.

LET ME GIVE YOU AN IDEA OF WHAT WE IN NEVADA CONSIDER ADEQUATE SUPERVISION. THE NEVADA GAMING CONTROL BOARD EMPLOYS 372 FULL-TIME EQUIVALENT POSITIONS ANNUALLY. MORE THAN 100 OF THOSE EMPLOYEES WORK IN THE AUDIT DIVISION, ANOTHER 100 IN THE ENFORCEMENT DIVISION. AND THAT 372 EMPLOYEES DOES NOT INCLUDE ATTORNEYS. A STAFF THAT LARGE IS REQUIRED JUST FOR ADMINISTRATIVE AND INVESTIGATIVE SUPPORT.

THOSE EMPLOYEES ARE TASKED WITH TRACKING THE MORE THAN $5.5 BILLION DOLLARS IN GAMING REVENUE THAT IS BROUGHT IN THE STATE OF NEVADA ALONE BY MORE THAN 2,400 LICENSEES.

IF IT TAKES THAT MANY PEOPLE TO SUPERVISE GAMING OPERATIONS IN ONE STATE, CAN YOU IMAGINE THE STAFF NEEDED TO COVER THIS ENTIRE NATION AND THE MASSIVE REVENUES INDIAN GAMING WOULD GENERATE? YOU CAN IMAGINE THE NUMBER NEEDED, THEN REALIZE THAT THE CURRENT STAFF TASKED WITH THAT RESPONSIBILITY COMES OUT TO BE JUST 8 PEOPLE.

EACH NEVADA GAMING EMPLOYEE REGULATES AN AVERAGE SIX OPERATORS TO ONE REGULATING EMPLOYEE. FEDERALLY, 8 EMPLOYEES MUST REGULATE INDIAN GAMING OPERATIONS IN 257 TRIBAL CASINOS ACROSS THE NATION.

AND IN THAT MASSIVE RESPONSIBILITY, FEDERAL REGULATORS HAVE THE ADDITIONAL BURDEN OF HAVING TO WORK WITH CASINO OPERATORS WHO, HIRED BY THE INDIVIDUAL TRIBES, UNDERGO ABSOLUTELY NO BACKGROUND INVESTIGATION AT ALL. TO PREVENT CASINO MANAGEMENT TROUBLES AFTER AN OPERATION IS OPENED, NEVADA LAW REQUIRES AN EXTENSIVE BACKGROUND CHECK OF ALL MAJOR EMPLOYEES WITHIN A GAMING OPERATION. THAT PROVISION NOT ONLY APPLIES TO THE MAJOR CASINOS ON THE LAS VEGAS STRIP, BUT ALSO TO THE OWNER OF THE SEVEN-ELEVEN ON THE CORNER WHO HAS FOUR VIDEO POKER MACHINES BY HIS

FRONT DOOR.

THESE CONCERNS THAT I AM VOICING OVER THE CURRENT INDIAN GAMING REGULATORY ACT ARE NOT SIMPLY THOSE OF TWO STATES MAKING THEIR LIVING FROM GAMING. AS YOU WILL HEAR TODAY FROM OTHER WITNESSES, MANY MEMBERS OF THE GAMING COMMUNITY HAVE SIMILAR CONCERNS. IN ADDITION, 49 U.S. GOVERNORS HAVE SIGNED A PETITION CALLING FOR MAJOR REFORMS IN INDIAN GAMING LAWS.

CONGRESSMAN TORRICELLI AND I RECENTLY INTRODUCED THE GAMING INTEGRITY ACT WHICH WE FEEL ENHANCES THE ORIGINAL INDIAN GAMING REGULATORY ACT TO THE PURPOSES CONGRESS INITIALLY INTENDED. IT WOULD PROHIBIT GAMING ON TRIBAL LANDS UNLESS THE SPECIFIC FORM OF GAMING IS ALLOWED BY STATE LAW AS A COMMERCIAL, FOR-PROFIT ENTERPRISE. IT WILL ALSO STOP THE PROLIFERATION OF "GAMING ENCLAVES" WHERE INDIAN CASINOS ARE OPENED ON LANDS PURCHASED BY TRIBES BUT NOT ORIGINALLY PART OF TRIBAL LAND HOLDINGS. THE BILL WILL ALSO GIVE THE U.S. ATTORNEY AUTHORITY TO CONDUCT BACKGROUND CHECKS TO ENSURE SUITABILITY OF ANY INDIVIDUAL INVOLVED IN CASINO OWNERSHIP, OPERATION, OR FINANCING. AND FINALLY, THE GAMING INTEGRITY ACT WILL RETURN TO THE STATES THEIR SOVEREIGNTY BY REFORMING THE COMPACT NEGOTIATION PROCESS.

AND IN CONCLUSION MR. CHAIRMAN, I WOULD LIKE TO POINT OUT AGAIN THAT THIS POSITION IS NOT ONE CARRIED SINGLY BY NEVADA OR NEW JERSEY. I WOULD LIKE TO INTRODUCE INTO THE RECORD A LETTER FROM TREASURY SECRETARY BENTSEN TO NEVADA SENATOR RICHARD BRYAN.

IN THE LETTER, SECRETARY BENTSEN, REPRESENTS THE CLINTON ADMINISTRATION'S POSITION BY STATING THAT WITHOUT PROPER REGULATORY REQUIREMENTS FOR RECORD-KEEPING AND INTERNAL CONTROLS, THE INDIAN GAMING INDUSTRY IS AN ATTRACTIVE TARGET FOR MONEY LAUNDERING.

TO QUOTE FROM THE LETTER, "WE BELIEVE INDIAN GAMING ESTABLISHMENTS SHOULD BE SUBJECT TO REPORTING AND RECORDKEEPING REQUIREMENTS COMPARABLE TO THOSE APPLICABLE TO NON-INDIAN GAMING ESTABLISHMENTS. FOR THIS REASON, THE DEPARTMENT WOULD SUPPORT LEGISLATION TO AUTHORIZE

THE SECRETARY OF THE TREASURY TO PRESCRIBE BY REGULATION RECORDKEEPING AND REPORTING REQUIREMENTS FOR APPROPRIATE INDIAN GAMING OPERATIONS.

MR. CHAIRMAN, THE EXISTING GAMING COMMUNITY IS NOT SO MUCH WORRIED OVER COMPETITION. THOSE OF US FROM NEVADA TAKE THE POSITION THAT VISITORS COME FOR THE LAS VEGAS EXPERIENCE, NOT SIMPLY FOR THE GAMING. WE ARE CONCERNED COLLECTIVELY THAT THE INDUSTRY WE HAVE STRIVEN TO BUILD OVER SEVERAL DECADES WILL BE TARNISHED BY A SMALL NUMBER OF UNSCRUPULOUS OPERATORS TRYING TO TAKE ADVANTAGE OF INDIAN TRIBES DESPERATELY TRYING TO FIND A PLAIN OF ECONOMIC STABILITY FOR THEIR PEOPLE. HELP US TO ENSURE THAT BOTH CONCERNS CAN BE ADDRESSED.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY, AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

Mr. RICHARDSON. Thank you very much.

Let me say that the Chair is going to excuse himself for a few minutes. I did want to hear my colleague give his testimony. Hopefully, I will be back. Let me remind witnesses that we have an informal rule called the five-minute rule. We ask you submit your statement in its entirety and we ask you summarize in five minutes.

The gentleman from Hawaii will assume the Chair until my return. The Chair recognizes the gentleman from Hawaii and thanks him.

Mr. ABERCROMBIE. Good morning, Mr. Bilbray.

I want to tell you personally how much I appreciate your testimony. As you know, we have a situation in Hawaii—while not exactly parallel to Native American Tribes on the mainland, nonetheless that is comparable—and there has been discussion in Hawaii about whether native Hawaiian land might become available for gaming. So I can assure you that my interest is not only one having to do with our duties on this committee, but I have a highly personal and intense interest in what you have to say and the information that you can provide and more particularly the perspective that you bring to bear on this issue.

Did you wish to pursue a statement a little bit further?

Mr. BILBRAY. That is fine. I mentioned about organized crime being involved, but also how the investigators stop at the audit division. Something that is not done with Indian Tribes here is making sure there is an adequate amount of money on hand to pay any winners. In Nevada they have a very strict formula on how to pay off people that win. So that if you have say a progressive slot machine that is up to $3 million or $4 million and somebody hits it, Nevada does not allow not having adequate reserves to pay off that person.

The same thing on a blackjack table. They take a formula based on the amount of the bet, what your limit is. If the table limit is a hundred dollars per bet, they make sure that there are revenues on a formula that is in the cage to pay off anybody. If somebody won a large amount of money, $4 million or $5 million for instance at a baccarat table, the last thing a Nevada casino wants or the Nevada State Government wants is to say, "We are sorry you broke the bank. We have no money to pay you."

With the Indian Tribes, there is nobody that says you have to have ratio of money. They don't have to keep that entire amount of money in their cage. They can have TCDs, time certificates. If you had a million dollar time certificate, you would take it to the Gaming Control Board, give them the original, the bank would be instructed that the person who had the time certificate could not cash those unless the Gaming Control Board gave permission.

I don't know of any Indian Tribe that has any restriction like that now. They may have internal controls by agreements with lessees, but they need agreements like coming out of Nevada after 50 years of living with organized crime that virtually controlled the casino industry for 20 years of that 50-year period.

Mr. ABERCROMBIE. Did you want to pursue anything more?

Mr. BILBRAY. That is all, Mr. Abercrombie. I think Nevada and New Jersey can be a great help to many of the Tribes in helping

them organize and regulate. We don't have the kind of personnel, but at one time I think a Senator said maybe we should turn all regulating of gambling in the country over to Nevada.

We do not want to become the regulator for gambling all over the country, but somebody has to do it. Six people is not enough to regulate the country. It is a time bomb that is ticking.

Mr. ABERCROMBIE. You alluded to some of the history of the establishment, literal establishment of casinos in Nevada. So that is obviously a growth period. You indicated as well that there were some regulatory problems that had to be addressed in an evolutionary way in Nevada.

Wouldn't the argument be made that this is a similar situation for gaming with respect to Indian Reservations, that this is a period of growth and that they can avoid some of the pitfalls, some of the difficulties that you have outlined, by referring to your experience and perhaps that of New Jersey right now and as a result can move forward and deal with the problems with much less difficulty?

Mr. BILBRAY. I think that is true. They can draw on Nevada's experience. New Jersey did. When they started out, New Jersey met with Nevada gaming regulators. In fact, they went in and hired heavily out of the Nevada gaming establishment. In doing so, they didn't have to reinvent the wheel. You have to remember when they opened their first casinos, Resorts International on the boardwalk, they had gone through the complete scrutiny and been licensed by the State of New Jersey Gaming Commission.

Their forms were as extensive if not more extensive than Nevada. They had been thoroughly investigated, their internal audits had been created, the regulations creating how they will deliver the cash from the cash box at the game into the count room and how it is recounted—all those things had been established before they opened their first casino.

In this case that didn't happen. You have hundreds of Tribes running casinos that have no reporting to anybody. They don't have any internal audit that is regulated by anybody outside of their own operators. They don't have any background checks on the casinos.

Let me tell you, just a district FBI check won't meet it. If somebody has a 7-Eleven and has four to five slots they file a different form; it is considered a restricted license. They send fingerprints in with a background check, it goes to the FBI, the FBI runs it through their records, it comes back and it says that he has been arrested. If a red flag waves, they will go into further investigation.

Mr. ABERCROMBIE. May I interject—please keep your thought in mind, where you wanted to go. But for my information and for the record, maybe you can give us a little bit of the history, how is it and why is it the FBI gets involved? In other words, you have a Federal jurisdiction, you have the Nevada Gaming Commission, and you say FBI check.

If the FBI is required, there are only so many agents with the FBI. How do they get into it, why, what is the law and the relationship between the State and the Federal Government with respect to that?

Mr. BILBRAY. Over the years, various agencies of different governments have been involved with the FBI. For instance, if you want to get a real estate license in Hawaii, I assume you fill out an application and have a fingerprint card and that is sent in by the Real Estate Division from the State of Hawaii with a fee.

With the fee, the FBI runs that through and gives you back a report on that individual. The criminal activities go first and one of the complaints is sometimes it takes forever for the FBI to get these back because law enforcement needs go first.

These agreements have been entered into by the Federal law enforcement people with the States and individual agencies over the years. That is why the FBI does it.

Mr. ABERCROMBIE. So it is volitional, not something the FBI is required to do?

Mr. BILBRAY. They may be required under some statute, but I don't know of any offhand. We pay a fee, whatever the fee is now—years ago it used to be $25. It could be a hundred dollars. The agency sends a check and it goes to the FBI and the FBI sends it back. But it is only on the surface, because unless the person has been arrested, either convicted or not, you are not going to see much from the FBI report.

So when you have an unrestricted license, a major casino or somebody that has 14, 15 slots, then you have to have this detailed investigation. Normally what happens is, if you were asking for an application and you lived in Hawaii but you came to Nevada and wanted to be involved in a casino, we would have an investigation done. They would send an auditor and investigative agent to your State and also to where you lived if you weren't born in Hawaii.

They would send somebody to where you were born. They would talk to people that knew you when you were growing up.

Believe me, they will know more about you when they finish than you know about yourself. I have had people that said——

Mr. ABERCROMBIE. I thought I left all my old enemies behind when I went to Hawaii.

Mr. BILBRAY. That is right. They make you have years of audit trail on your checks. If you don't have your checks for six, seven years back, they will make you go back to the bank and have them photostated and brought to them.

Mr. ABERCROMBIE. These are the Nevada people?

Mr. BILBRAY. Absolutely. None of that takes place in Indian gaming. People that would not dare to submit for a license in Nevada because they know they have no chance of getting that license because of connections can deal with any Tribe.

If a Tribe doesn't have the resources—and they don't have the resources we do to check these people out—they will never know that they are dealing with Vito Genavesi's godson. Those people think they can get away with murder. They will be involved with the Tribes, and then if the Tribes want to get rid of them, God help them down the line.

Mr. ABERCROMBIE. I understand what you are saying and I appreciate it, but is the burden then of your commentary that once you start with the FBI check and parenthetically, having been a probation officer in the past, I am familiar with the process and what is involved in what might be called a preliminary stage, just

making a preliminary foray, if you will, into seeing whether someone has been arrested at some point, whether there is some kind of criminal background.

So the Act, if it required and does require a background check, you do agree I think that more resources need to be devoted to the background investigation?

Mr. BILBRAY. Absolutely.

Mr. ABERCROMBIE. The question I wanted to ask you is about the funding for this. How do you achieve the funding for getting the personnel and the requisite logistics to do this?

Mr. BILBRAY. It is paid by several ways. First of all, we have a gross win tax that is charged to the casinos. They pay I think 6½ percent. I may be wrong, because it changes. Each legislature changes it. They pay on the gross win, not the net.

That money goes into States' coffers and part goes to fund the Gaming Control Board and their investigation people.

Second, the applicant pays it. In one case I represented a client that by the time they finished his investigation before his license was issued—they won't give you your license or give you your last hearing until your check is in, that is even if they are going to turn you down—had paid $125,000 to the State for the investigation. That is abnormal.

I have heard of people that have paid close to half a million dollars before their investigation is completed because they wanted that license bad enough that they were willing to go to the extent of paying these tremendously high fees because every time they were alleged to have been involved with somebody, they were willing to pay more and say that is not true.

If you will investigate further, you will find that my contact with that person was very limited. If you have to send twenty investigators to New York City to spend six months to prove that out, I will pay the money to do it. But the fees are paid by the individual applicant or in some cases the establishment can pay part of that to whomever is being licensed.

If you have a new casino being built, they may agree that out of the corporate monies that all licenses are paid. That is not generally the practice. Each person usually pays his own. So if the Federal Government wanted to set up the agency for a thorough investigation agency, they would then have the applicant submit checks and they would probably have an initial check of $2,000 or $3,000.

As the investigation proceeds, the individual agency then notifies the applicant, "Mr. Abercrombie, we have used up your $2,000. We need $5,000 or $10,000," and they won't proceed with that application until they get their money.

The day you go for your licensing, if you were the licensing boards, before they would set the meeting up for you to come in and get your final licensing, they would require that the entire fee be paid because they know the guy that gets turned down and still owes $10,000 is not about to send them a check for $10,000 later.

So they make sure they get it up front.

Mr. ABERCROMBIE. Something like newspapers with political advertising, right? We have to pay upfront?

Mr. BILBRAY. That is correct. If we lose, they know they will have a hard time collecting. It is the same thing in gaming.

Mr. ABERCROMBIE. Your recommendation is that at a minimum, anybody that would be dealing with the Tribes inasmuch as most Tribes probably don't have the funds available to them up front would be required perhaps to post a bond or something showing that they have the financial wherewithal to be able to represent the interest of a Tribe in whatever partnership is established?

Mr. BILBRAY. That is correct, but you have to look at the licensing of the individual Tribe members, too because there are corrupt people——

Mr. ABERCROMBIE. I understand that part.

Mr. BILBRAY. The bonding is important. The money should be put up.

I understand a few years ago there was a Tribe in California advertising a million dollar black-out bingo game when bingo was prevalent before they went into unlimited gambling.

One of the State Attorneys was talking to us in the State Legislature or talking to me before I came to Congress and said that they were very concerned, because if anybody ever hit that million dollar black-out game that the Tribe was totally incapable of paying that money.

Mr. ABERCROMBIE. You have in your testimony, I think, the existing ratio of each Nevada—I am referring to page 3—each Nevada gaming employee regulates an average of six operators to one regulating employee.

Mr. BILBRAY. That is correct.

Mr. ABERCROMBIE. You previously stated in your testimony with respect to 372 full-time equivalent positions, 100 employees in the Audit Division, 100 in the Enforcement Division, attorneys, et cetera.

How do you divide out that employee that regulates? How does that relate to the previous testimony in terms of how you divide the employees up?

Mr. BILBRAY. Both the audit and investigation people both regulate and go in. The audit people will walk into your cage, which is where you keep your money. They could come any time, day or night, any hour. They walk into your cage. They can demand to count your money and they can do it.

They can say, "I want to count how much money you have on hand," which includes money in your boxes, and if you have an inadequate amount of money or if you don't have enough deposited in your TCDs to protect that and they find it is inadequate, they can close your casino.

Mr. ABERCROMBIE. I am asking you whether or not you believe that the ratio that you have in Nevada at the present time is an adequate one?

Mr. BILBRAY. Yes, we believe it is. I am sure the division would tell you they would like to have another 200 or 300 now. Like any agency, no one has enough. In the Tribes, I think it would be higher because we have a compact area. Ninety percent of your casinos are either in Reno, Tahoe, or in Las Vegas. You have very few of them in the rural areas, but in this case, you have Tribes scattered over the whole United States.

Mr. ABERCROMBIE. So of your approximately 2,400 licensees, well over 2,000 or higher are in those areas?

Mr. BILBRAY. That is correct.

Mr. ABERCROMBIE. So just from a logistical point of view, it is easier to control and monitor?

Mr. BILBRAY. One agent could conceivably go in and inspect three or four casinos in one night. Where if you do it with the Tribes, just the logistics of going from Point A to Point B, many of the Tribal Reservations don't have municipal airports even to fly there.

Mr. ABERCROMBIE. You refer to the number of employees, eight employees——

Mr. BILBRAY. My testimony said eight, but I was told by my staff right before I came in that that was an error, it was six; either six or eight.

Mr. ABERCROMBIE. To your knowledge, I don't expect you to be up on necessarily all of this, but to your knowledge, is the 257 tribal casinos to which you refer a pretty accurate number today?

Mr. BILBRAY. That is the figure that we received right before the hearing. The way they are popping up, there could be five or six more by today.

Mr. ABERCROMBIE. Is it your expectation that number will increase?

Mr. BILBRAY. Absolutely. It will double if not triple over the next four to five years, I would think.

Mr. ABERCROMBIE. I also wanted to ask you about the question of gaming enclaves that you refer to in the Gaming Integrity Act. I realize this is stated in your testimony, but I want to get it on the record to make sure that I have it adequately understood—is it the intention of the Act that if land is purchased by a Tribe and that land is not originally part of tribal holdings, that it would be ineligible to be utilized for the establishment of a casino?

Mr. BILBRAY. That is my intent, but I think you also have an additional problem because you say traditional tribal holdings. If you go back 200 years——

Mr. ABERCROMBIE. Did I say traditional? I didn't know that I put that modifier in there.

Mr. BILBRAY. What you have to do is identify what areas are presently within the tribal control at the present time. We have had the problem where a Tribe would go to a major metropolitan center in a State and buy a lot or a shopping center or building in the middle of the city and then petition the Interior Department, Bureau of Indian Affairs, to allow that particular site to be made part of the Reservation or the tribal trust properties, and therefore declaring it eligible to have a casino.

You could probably go to almost every Congressman in this Congress and hear horror stories about the downtown shopping center in Raleigh, North Carolina, or Duluth, Minnesota, or other areas. So far, the Secretary of Interior has taken a very, very dim view on allowing Tribes to acquire properties that are not part of the present tribal properties.

If you get into traditional tribal properties, you could say a Tribe like the Sioux could say the entire area of South Dakota or North Dakota belongs to the Sioux Indian, therefore everything is part of

the traditional tribal area. We have the same problem in Nevada. The Shoshones claim that they own almost all of the State. We are talking about recognized tribal boundaries as of since 1990.

Mr. ABERCROMBIE. Have there been serious suits put forward to adjudicate the issue, serious in that someone has actually filed and intends to carry through?

Mr. BILBRAY. I don't know about suits but they have certainly petitioned the Bureau of Indian Affairs and the Secretary of Interior for permission to add those properties to their tribal properties, in some cases with the pretense that it is not for Indian gaming, but realistically most of us know that as soon as it was obtained by the Tribe that it would at that point become part of the tribal Reservation and then they would petition to allow gaming to go on there.

Sometimes they say it is for a shopping center site or other things they want to add. So it is a serious problem in that regard.

Mr. ABERCROMBIE. One last issue. Again for the record, your testimony here today is not to try and forbid Indian gaming so that it could be construed as favoring New Jersey or Nevada, but rather an attempt to point out where the difficulties are and what your view is in terms of what needs to be done in order to facilitate this in a manner that will benefit the Indian Tribes?

Mr. BILBRAY. Absolutely, and protect the people of the country as well. I think Indian gaming is a fact of life. It is there. It is established. It is part of the fabric of society today, but it has to be regulated and controlled. It should not go beyond the intent of the law.

One of the problems is where you have a State lottery and the Tribes have said that where you have a lottery you are entitled to the entire spectrum of gambling or if you have Las Vegas nights run by charities, that even if these are very limited in scope, that that means you could have unlimited gambling in each area.

We thought the intent of the Act was clear. We are willing to live within the intent of the Act, but we think because of the ambiguities in the Act that we have to go back and shut down some of the areas that have gone way beyond the scope of what the Act intended.

We do not intend to outlaw the gambling or try to repeal the Act. We just think it needs to be modified and cleared up.

Mr. ABERCROMBIE. Thank you.

Mr. RICHARDSON (presiding). I have one question to my colleague. Is there a number that the gentleman has suggested in terms of regulators that he feels should be there for Indian gaming?

Mr. BILBRAY. I think it has to be several hundred and probably more per ratio in Nevada. As I pointed out in my previous statement, 90 percent of the gaming activities in Nevada take place in three geographical areas, Reno, Tahoe, or Las Vegas.

There are probably not 30 full-scale casinos in the rest of the States. Maybe more than that, but somewhere around that number. We have a 1 to 6 ratio, but remember that many of our investigators investigate 7-Elevens with 4 slots in them in that mix.

I think that because of the geographical area covering the whole United States that you are going to have to have one to two agents, auditors and investigative people for every single Reservation that you have licensed.

Mr. RICHARDSON. I thank the gentleman. The gentleman is excused. We appreciate his testimony.

Mr. RICHARDSON. We will now move on to panel one: Mr. Paul Dworin, Publisher, *Gaming & Wagering Business* magazine; and Mr. Will Cummings, consultant, Christiansen/Cummings.

PANEL CONSISTING OF PAUL DWORIN, PUBLISHER/EDITOR, GAMING & WAGERING BUSINESS MAGAZINE; AND WILL E. CUMMINGS, MANAGING DIRECTOR, CHRISTIANSEN/ CUMMINGS ASSOCIATES, INC.

Mr. RICHARDSON. I remind the two gentlemen-besides welcoming them-that their statements will be fully incorporated into the record. We ask that you summarize your testimony in five minutes, and the Chair recognizes Mr. Paul Dworin.

STATEMENT OF PAUL DWORIN

Mr. DWORIN. Thank you, Mr. Chairman and Members of the subcommittee. I will keep my comments brief.

A little background. *Gaming & Wagering Business* magazine is the leading publication covering the international commercial gambling industry. Each year we publish a two-part series titled, "The Gross Annual Wager of the United States," prepared for us by the consulting firm of Christiansen/Cummings Associates.

This study, which estimates the amount of money wagered and spent on each type of gambling in this country, is now in its 11th year and is considered the benchmark for all statistical analyses of the commercial gambling industry. The numbers published in this study are the most widely accepted and cited numbers and provide the only legitimate historical review of U.S. wagering patterns over the past decade.

In order to provide a common ground for comparison among the various segments of the commercial gambling industry, "The Gross Annual Wager" analyzes "handle"—or the total amount wagered—and "revenues"—or the total amount retained or won.

The use of the term handle causes confusion. While handle is clearly understood in both pari-mutuel wagering and lotteries in that money rather than chips is the medium by which bets are made and thus handle is easily accounted for. In other words, a direct correlation exists between the exchange of money and a bet. For casino table games, there is a disjunction between the exchange of money for chips and actual wins and losses. That is why casinos focus on the term drop, which in casino revenue accounting is cash or cash equivalents exchanged for chips. This procedure generates neither win nor handle.

Another way of looking at drop is as collective players' bankroll. Handle, in contrast, is the total amount wagered. A chip may be wagered many times before the game goes to a decision and the chip is won or lost.

The relationship of drop, handle and win may be summarized in the following example: A player buys 20 $5 chips for $100 and wagers them one at a time every minute for one hour. Our player will win some bets and will lose some bets, but ultimately, at the end of that hour our player has 17 $5 chips left or $85 and decides to cash in and leave the casino. Our player has generated a handle

of $300, one $5 chip every minute for 60 minutes, on a drop of $100. The casino, meanwhile, has won $15.

While casinos in both major U.S. casino jurisdictions report handle for slot operations, handle at table games is not accounted for. In "The Gross Annual Wager of the United States," casino handle is calculated by applying the relevant expected value or casino advantage of each game and applying it to the gross revenues or win for each game.

Each game has an expected value or casino advantage based on rules of play. Nevada and Atlantic City roulette, for instance, has an expected value of 5.26 percent. The aggregate expected value for all Nevada and Atlantic City table games is 2.18 percent or 2.2 percent. To calculate the handle, therefore, gross table game revenues of $3.12 billion in 1992 must be divided by 2.2 percent, which yields a 1992 handle of $143.1 billion for U.S. table game play in Atlantic City and Nevada.

Thank you very much.

[Prepared statement of Mr. Dworin follows:]

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TESTIMONY OF PAUL DWORIN
PUBLISHER/EDITOR
GAMING & WAGERING BUSINESS

U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Native American Affairs
June 25, 1993

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In order to provide a common ground for comparison among the various segments of the commercial gambling industry, the Gross Annual Wager analyzes "handle", or the total amount wagered, and "revenues," or the total amount retained or "won."

The use of the term "handle" regrettably causes confusion. While handle is clearly understood in both parimutuel wagering and lotteries--money, rather than chips, is the medium by which bets are made and thus handle is easily accounted for; i.e., a direct correlation exists between the exchange of money and a bet--for casino table games there is a disjunction between the exchange of money for chips and actual wins and losses. That is why casinos focus on the term "drop," which, in casino revenue accounting, is cash or cash equivalents exchanged for chips. This procedure generates neither win nor handle.

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The relationship of drop, handle and win may be summarized in the following example: A player buys 20 $5 chips for $100 and wagers them one at a time every minute for one hour. Our player will win some bets and will lose some bets but, ultimately, at the end of that hour, our player has 17 $5 chips left, or $85, and decides to cash in and leave the casino. Our player has generated a "handle" of $300 (1 $5 chip every minute for 60 minutes) on a drop of $100. The casino, meanwhile, has "won" $15.

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PAUL DWORIN
PUBLISHER/EDITOR

Paul Dworin has nine years experience as a journalist covering the commercial gambling industry worldwide. As editor, he is responsible for the overall editorial content of Gaming & Wagering Business, which is widely regarded as the preeminent business publication covering the international commercial gambling industry.

As publisher, Mr. Dworin is responsible for the business health of the publication; as such, he is in continual contact with industry leaders.

Mr. Dworin is a widely sought after speaker at conferences throughout the world and has been invited to testify on various aspects of commercial gambling before state and local governments.

Mr. RICHARDSON. Mr. Cummings.

STATEMENT OF WILL CUMMINGS

Mr. CUMMINGS. As Mr. Dworin indicated, Christiansen/Cummings is a consulting firm which specializes in gambling and entertainment matters, and we prepare each year for them a two-part series of articles regarding "The Gross Annual Wager of the United States." We coined that phrase on parallel with the Gross National Product, and for those articles we estimate the amounts wagered and spent on each type of gambling legal in this country and then the total aggregate amount for all legal types.

Based upon a wide variety of fragmentary and regrettably incomplete sources but applying all of the factors and parameters which we have learned through our studies of all types of legal gambling in other jurisdictions, State-regulated jurisdictions, we estimate that in 1992 Native Americans' tribal gaming operations handled approximately $15 billion in wagering. That includes the rewagering of winning bets in the middle of play, as Mr. Dworin's example indicated.

Class II gaming, mostly bingo and pull-tabs, accounted for $1.4 billion in handle, and Class III gaming, mostly casinos, table games and gaming devices, for $13.7 billion. The $15 billion total amounted to approximately 4.6 percent of the total U.S. Gross Annual Wager of $330 billion in 1992.

Now, again, these handle figures include the rewagering of winning bets. And for games like blackjack and other casino table games, for gaming devices such as slot machines and for pari-mutuel gaming, pari-mutuel racing of different types, the rewagering of winning bets is very significant.

Handle is thus not very comparable to other economic indicators for other types of businesses. The indicator which is most comparable is revenues net of prizes. That is after the winning bets have been paid to players, and this figure is called win at casinos. It is called the takeout on pari-mutuel wagering. This measures the collective player losses, the amount of money which is spent by the players as a group or transferred to gaming operators. It is thus comparable to sales figures for other types of businesses.

By this measure, we estimate that the aggregate revenues of tribal gaming operations, net of prizes, amounted to approximately $1.5 billion in 1992. We are not clear at all on where the estimate of $5.8 billion, which was quoted earlier, what the source for that is. That may include drop rather than actual revenues to the Tribes and gaming operators.

We estimate $1.5 billion in net revenues to tribal gaming operations. That consisted of $429 million from Class II games and roughly $1,070,000,000 from Class III games. And the total of $1.5 billion in revenues represented roughly 5 percent of the total U.S. legal wagering win or revenues of nearly $30 billion in 1992.

We believe that $1.5 billion revenue figure represents the most accurate picture of the relative size of tribal gaming operations compared to other types of businesses, but it is clear that that figure is growing rapidly. The number for 1992 was more than double our estimate in 1991, and it appears that this rate of increase is continuing in 1993.

Thank you.
[Prepared statement of Mr. Cummings follows:]

Christiansen/Cummings
Associates, Inc.

Testimony of Will E. Cummings

Managing Director
Christiansen/Cummings Associates, Inc.

U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Native American Affairs
June 25, 1993

Christiansen/Cummings Associates, Inc., is a consulting firm which specializes in the entertainment and gambling industries. Each year, we prepare for *Gaming and Wagering Business* magazine a pair of articles titled, "The Gross Annual Wager of the United States," for which we estimate the amounts of money which are wagered and spent on each type of gambling legal in this country, and the total aggregate amounts for all types of legal gambling. Within our firm, Eugene M. Christiansen (who is unfortunately travelling overseas today) is the principal author of these articles; I assist him and direct our staff in portions of the relevant research.[1]

Based upon a variety of regrettably fragmentary and incomplete sources,[2] we estimate that Native Americans' tribal gambling operations *handled* approximately $15,174,500,000 in wagering in 1992, including the re-wagering (or "churn") of winning bets by many players. Class II gambling, mostly bingo and pull-tabs, accounted for $1,430,000,000 of this total, and Class III gaming, mostly casino-style table games and gaming devices, for $13,744,500,000. The

[1] Background information on Christiansen/Cummings Associates, Inc. (CCA), Mr. Christiansen, and myself is appended to this testimony.

[2] Including conversations with tribal representatives, tribal gaming operators, and competing gambling businesses; media reports regarding facility sizes, levels of customer traffic, and, occasionally, financial results; filings with the S.E.C. (in the very rare [in 1992] instances of publicly-traded corporations involved in tribal operations, such as Grand Casinos Inc.); and calculations based upon facility sizes, configurations, demographics of the surrounding market areas, and industry ratios of handle or win developed from comparable state-regulated (and thus, publicly-reported) situations.

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$15.1 billion total amounted to roughly 4.6 percent of the total U.S. "Gross Annual Wager", or total wagering handle on all legal games, of $330 billion. Table 1 presents a summary of the handle figures for all legal games in calendar 1992.

Because the handle figures include the re-wagering of many winning bets (which are particularly significant for casino table games, gaming devices, and horse and greyhound racing), they are not very comparable to other economic indicators for other types of businesses. The indicator which *is* most comparable is *revenues net of prizes* (winning bets); this is called "win" at casinos, and "the takeout" on pari-mutuel betting. This measures collective player losses, or the aggregate amount that changes hands from the players as a group to the game operators as a group, and is thus comparable to *sales* figures for most other types of businesses.

By this measure, we estimate that the aggregate revenues of tribal gaming operations, net of prizes, amounted to approximately $1,498,940,000 in 1992. This included $429 million in revenues from Class II gaming, and $1,069,940,000 in revenues from Class III gaming. The total of $1.5 billion represented roughly five percent of the aggregate revenues for all legal gambling in the U.S. in 1992, which we estimate at $29.93 billion. Table 2 presents a summary of the revenue figures for all the legal gambling activities in the U.S. in 1992.

The $1.5 billion in tribal gaming revenues, which we believe presents the most accurate picture of the relative "size" of the industry in 1992, represents an increase of more than 100 percent (a doubling) over the previous year. This rate of growth appears to be continuing in 1993.

I conclude with extracts from the text of our "Gross Annual Wager" articles:

Regarding handle (to appear in *Gaming and Wagering Business*, July 15, 1993):

> "The biggest single story of 1992 was the tapping of unsatisfied demand for blackjack and slot machines by new-market casinos . . ."
>
> "The volume and revenue yield of casino gaming on Indian lands is a much-confused subject. A widely publicized figure of $6 billion in Indian casino win (gross gaming revenue) cannot possibly be accurate; Indian casinos did not win twice the amount Atlantic City's casinos won in 1992 [$3.2 billion], or anything like it. The problem may lie in a confusion of *handle* and/or *drop* with *win* . . . we encounter such misunderstanding in Native American gaming all too frequently. What's certain is that the volume of dollars circulating in casino games on Indian lands exploded in 1992. By our estimates, which are (as in every case when hard to-the-penney reporting is not available)

conservative but not excessively so, wagering volumes in Class III games skyrocketed by approximately 240% (+$9.7 billion) -- growth that parallels what is being reported from riverboats and other new-market casinos. Handle in Class II (mostly bingo) games rose by a much smaller amount, which we estimate at 2.3%, or $32.5 million. The meaning of the Indian Gaming Regulatory Act continues to be the object of litigation in Federal courts and Congress appears increasingly disposed to revisit the issue, but as a practical matter we view any rollback of Class III gaming already compacted for as a very remote possibility. As things stand, further dramatic growth in Indian gaming is, as we observed last year, an absolutely sure thing."

Regarding revenues (to appear in *Gaming and Wagering Business*, August 15, 1993):

"For the third year running Class III games, which include casino table games and gaming devices, led all USGI [a fictional 'holding company' comprising all U.S. legal gambling activities] divisions in revenue growth, with an estimated 256% ($769 million) increase. When combined with a marginal (2.3%, or $9.8 million) estimated increase in Class II revenues (mostly bingo), the tremendous growth in Class III GGR [Gross Gambling Revenues] produced an overall gain in Indian gaming revenues of 108%, or $779 million. The gains pushed estimated aggregate gross gambling revenues from commercial games on Indian lands to $1.5 billion in 1992. Of that amount almost $1.1 billion was generated from Class III casino games.

"As we observed in Part I of this article, there is a lot of confusion about the scale of Indian gaming. A widely publicized figure of $6 billion win from Indian casinos cannot possibly be accurate. The originators of this inaccurate statement may have confused *drop* with *win*: on the assumption that Indian casinos are winning an average of 18% of drop, a $6 billion Indian casino drop would generate $1.08 billion win, which agrees pretty well with our independently derived estimate.

"There is also confusion about the revenue yield of the Indian Gaming Regulatory Act (IGRA) for Native Americans. With a new administration in Washington and Congress making noises that sound like expressions of intent to revisit IGRA this confusion is unfortunate. The "New Buffalo" is valuable, no doubt about it. To some extent the Indian experience with IGRA is paralleling the Nevada experience with the Nevada Gaming Act of 1931. In both cases gaming is creating a commercial economy in regions that prior to legalization had none. But the New Buffalo isn't a six billion-dollar animal, not yet. Assuming that Native Americans are receiving the

statutory minimum of the GGR generated from IGRA-authorized games, that minimum percentage -- 60% -- when applied to the $1.5 billion GGR generated from Class II and Class III Indian games in 1992 translates into $900 million in revenues for Native Americans. (The remaining $600 million would, under this assumption, go to holders of management contracts.) These are estimates, but they're in the ballpark. Until the Federal Government faces up to its responsibility to the public at large and starts reporting on Indian gaming these numbers will have to do."

Table 1: 1992 Handle by Industry

	1992 Gross Wagering (Handle)
Pari-Mutuels	
Horses	
Tracks	$9,533,550,092
OTB	4,577,705,686
Total	14,111,255,778
Greyhounds	
Tracks	3,242,150,854
OTB	62,229,466
Total	3,304,380,320
Jai Alai	425,890,129
Total Pari-Mutuels	17,841,526,227
Lotteries	
Video Lotteries	1,326,353,000
All Other Games	23,035,474,000
Total Lotteries	24,361,827,000
Casinos	
Nevada/NJ Slot Machines	94,557,329,008
Nevada/NJ Table Games	143,100,618,577
Cruise Ships	4,280,508,750
Riverboats	7,319,681,498
Other Commercial	3,078,234,749
Non-Casino Devices	557,447,916
Total Casinos	252,893,820,498
Legal Bookmaking	
Sports Books	1,800,782,918
Horse Books	307,512,279
Total Bookmaking	2,108,295,197
Card Rooms	8,428,085,000
Bingo	4,306,214,000
Charitable Games	4,774,841,000
Indian Reservations	
Class II	1,430,000,000
Class III	13,744,500,000
Total Indian Reservations	15,174,500,000
Grand Total	$329,889,108,922

Note: Column may not add to totals due to rounding.

Table 2: 1992 Gross Gambling Revenues by Industry

	% Retained	1992 Gross Revenues (Expenditures)
Pari-Mutuels		
Horses		
Tracks	20.34%	$1,939,309,121
OTB	21.18%	969,562,063
Total	20.61%	2,908,871,184
Greyhounds		
Tracks	20.83%	675,367,175
OTB	20.43%	12,711,225
Total	20.82%	688,078,400
Jai Alai	20.96%	89,264,492
Total Pari-Mutuels	20.66%	3,686,214,076
Lotteries		
Video Lotteries	18.26%	242,230,000
All Other Games	48.68%	11,214,733,000
Total Lotteries	47.03%	11,456,963,000
Casinos		
Nevada/NJ Slot Machines	6.17%	5,830,586,443
Nevada/NJ Table Games	2.18%	3,120,137,399
Cruise Ships	7.14%	305,431,350
Riverboats	5.71%	418,021,561
Other Commercial	7.29%	224,300,143
Non-Casino Devices	43.44%	242,172,466
Total Casinos	4.01%	10,140,649,362
Legal Bookmaking		
Sports Books	2.81%	50,602,000
Horse Books	15.22%	46,799,000
Total Bookmaking	4.62%	97,401,000
Card Rooms	7.84%	660,811,000
Bingo	25.33%	1,090,944,000
Charitable Games	27.20%	1,298,949,000
Indian Reservations		
Class II	30.00%	429,000,000
Class III	7.78%	1,069,940,000
Total Indian Reservations	9.88%	1,498,940,000
Grand Total	9.07%	$29,930,871,438

Note: Column may not add to totals due to rounding.

Christiansen/Cummings
Associates, Inc.

Background and Experience

The principals and staff of Christiansen/Cummings Associates have performed studies of the economics, management, operations, taxation, and regulation of gaming and wagering businesses in more than thirty states, provinces, and foreign countries. The subjects of these studies have included casinos, sports and sports wagering, lotteries, and all segments of the pari-mutuel wagering industries. These projects have determined:

- The overall economic contribution of commercial gambling industries to countries, states, and individual localities;
- The degree of saturation and potential for growth in various gambling markets;
- The feasibility and revenue potential of new gambling ventures;
- The impact of the development of commercial gambling on U.S. Indian reservations on state-authorized wagering industries;
- The advisability of alternative strategies in legal proceedings, in legislative efforts, and before regulatory agencies;
- The effects of introducing new types of wagers into existing wagering businesses, and other competitive strategies;
- Optimum gambling tax rates and the impacts of changing tax rates on government and industry revenues.

CCA principals and staff have played an active role in bringing about the legalization of gambling in a number of jurisdictions, and have testified in this regard, and concerning gambling generally, before the U.S. Congress, state legislatures, local government bodies, and regulatory agencies.

The results of studies conducted by CCA principals and staff have been presented to the International Conference on Gambling and Risk-Taking (sponsored biannually by the University of Nevada at Reno), the World Gaming Congress, the University of Arizona Race Track Industry Program's annual Symposium on Racing, and the annual conferences of the American Horse Council, American Greyhound Track Operators Association, World Greyhound Federation, Harness Horsemen International, Harness Tracks of America, the Thoroughbred Racing Associations, and Racetracks of Canada.

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Christiansen/Cummings
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EUGENE MARTIN CHRISTIANSEN
President

Mr. Christiansen has fifteen years of experience as an executive and consultant in the commercial gambling and entertainment industries. In the area of commercial gambling, he has conducted studies of the economics, taxation, financial structure, and regulation of casino gaming, pari-mutuel wagering, and lotteries, and has counseled Manhattan and Washington, D.C. law firms in legal proceedings where gambling was an issue.

Representative recent work includes studies of the efficiency of a U.S. state lottery, estimates of demand for casino gaming, lotteries, and pari-mutuel wagering in U.S. and foreign markets, the feasibility and revenue potential of off-track betting, the financial structure of the Atlantic City casino industry, the impact of gambling on U.S. Indian reservations on state-authorized gambling industries, analyses of gambling taxation, procedures to increase wagering and improve the efficiency of pari-mutuel betting operations, and the changing nature of communications media and the implications of these changes for pari-mutuel horse racing.

Mr. Christiansen is the author of numerous articles dealing with casino gaming, pari-mutuel horse racing, greyhound racing, and jai-alai, off-track betting, lotteries, and related activities in trade, professional, and academic publications. He prepares authoritative statistical reports that are widely used domestically and abroad, including annual analyses of the gross wager of the United States which appear in *Gaming & Wagering Business Magazine* and pari-mutuel wagering for *The Thoroughbred Times* and other pari-mutuel trade publications. He is also a co-author of an influential academic study of gambling, *The Business of Risk: Commercial Gambling in Mainstream America* (University Press of Kansas, 1985).

Mr. Christiansen is a member of the Advisory Board of the Institute for the Study of Gambling and Commercial Gaming at the University of Nevada, Reno.

Mr. Christiansen has frequently been invited to address numerous casino and pari-mutuel industry conferences.

Mr. Christiansen has testified on various aspects of commercial gambling before Congress and state and local governments. His comments regarding gambling matters are often sought by the newsmedia.

Mr. Christiansen is a graduate of the University of California at Berkeley.

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Christiansen/Cummings
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WILL E. CUMMINGS
Managing Director

Mr. Cummings has eighteen years of experience in the field of management consulting. Prior to founding CCA, he was Managing Director of Killingsworth Associates, Inc., a consulting firm which specialized in professional sports and pari-mutuel businesses, and prior to that, a consultant with Pugh-Roberts Associates, Inc. In those capacities Mr. Cummings accumulated broad experience in conducting and directing analyses of the economics, management, taxation, and regulation of the sports and pari-mutuel industries.

Illustrative recent projects include: analyses of the feasibility and likely financial performance of off-track and inter-track wagering systems in states both with and without major existing racing industries; assessments of the feasibility of new racing facilities in a variety of different markets; a study of the potential impacts of the introduction of casino gaming on the racing industry; analyses of the factors affecting attendance and wagering at on- and off-track wagering facilities; analysis of the impacts of new types of wagers on fans' attendance and wagering at pari-mutuel facilities; and pre-purchase and -sale analyses of the value of pari-mutuel businesses.

Mr. Cummings has also directed assessments of the value of player contracts and franchises in professional sports, and developed a quantitative computer model for determining the impacts of television coverage on attendance and the development of the fan base for professional sports teams.

Mr. Cummings has also had extensive consulting experience in the development and application of quantitative computer techniques to strategic planning and forecasting for clients including investment banking firms, major multinational corporations, and U.S. government agencies.

Mr. Cummings has appeared as a featured speaker before the Association of Racing Commissioners International, Racetracks of Canada, the World Greyhound Federation, and other industry associations. He is a regular participant, as a panel moderator and speaker, at the University of Arizona Race Track Industry Program's annual Symposium on Racing.

Mr. Cummings holds the degrees of S.B. and S.M. from M.I.T.'s Sloan School of Management.

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Mr. RICHARDSON. The Chair recognizes the gentleman from Hawaii.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

Technically, Mr. Dworin, is it your contention or would you subscribe to Mr. Christiansen's and Mr. Cummings' business as being an accurate, leading business, someone with whom you would have confidence?

Mr. DWORIN. I would say yes. I have worked with Christiansen/Cummings for the nine and a half years I have been associated with the magazine, and I know their reputation to be of the highest order.

Mr. ABERCROMBIE. Thank you.

Mr. Cummings, I wasn't doing that because I doubted it, but I wanted it on the record. In other words, this is a business that you engage in and people rely on you, your figures as they plot out, about what they are going to be doing with their business activity?

Mr. CUMMINGS. Yes, sir. We work for all types of businesses and government regulators and other bodies involved in the gaming business.

Mr. ABERCROMBIE. So the kinds of estimates that you are making, I can see you have to do a lot of projection. This is not easy to get, no pun intended, a handle on, right?

Mr. CUMMINGS. Correct.

Mr. ABERCROMBIE. I appreciate being educated in the nomenclature here as to what is involved.

Mr. Dworin, is there some bone of contention in all this—and please operate on the basis that we need to know. Some of these things we may know, but they need to get on the record because not everybody in the committee is familiar with everything. Is the argument about the amount of money a bone of contention?

As you said, $5.8 billion versus $1.5 billion, that is a big difference, but it is easy for me to understand, given the guesstimate kind of operation that has to be involved here, how you could have differences in numbers. But is this a genuine difference? Is there a certain alarmist question associated with this?

In other words, there are so many billions of dollars involved that the hills are on fire, and we have got to call out the fire department. Or is there too much being made of this? $1.5 billion, to me, doesn't seem to be an extraordinarily great amount, considering the numbers of casinos that have already been alluded to today.

Mr. DWORIN. Well, it is also not an extraordinarily great amount when you consider that roughly 35 to 40 percent of that amount goes to the management companies.

I don't think it is an alarmist position. I think it is a lack of understanding of the terminology. Drop is neither handle nor win; it is just the amount of money put on the table.

There is certainly a bone of contention in the sense that you are talking about very different degrees of magnitude. You are talking about $1.5 billion or $6 billion. When you talk about $6 billion, people's ears perk up a little bit more than when you talk about $1.35 billion.

Mr. ABERCROMBIE. So do you think perhaps that the $6 billion figure is related to drop rather than the more accurate? For our purposes of legislation, you think the $1.5 is more accurate?

Mr. DWORIN. I would absolutely say that $1.5 is more accurate for your purposes. I am not sure absolutely they are talking about drop or it is just a number that they picked out of the air. I really don't know where the figure comes from. *USA Today* is not the authoritative source on gambling revenues.

Mr. ABERCROMBIE. I guess not.

Mr. DWORIN. They usually call us, by the way.

Mr. ABERCROMBIE. I am not sure they are an authoritative source on anything unless we want to start discussing newspaper monopoly acts.

Where do you see this doubling in size? You don't foresee this going on indefinitely, do you? The question really that I am asking is, Where do you think this is going to begin to peak or level off in terms of the size of the industry with respect to handle?

Mr. CUMMINGS. Well, clearly, it is not going to continue forever.

Mr. ABERCROMBIE. Or the takeout and win?

Mr. CUMMINGS. The growth in handle on revenues cannot continue to double every year forever. However, under the current structure and the current hodgepodge of ways in which the Indian Gaming Regulatory Act is currently being applied in the different states, there is a long way yet for both existing Indian gaming operations to grow and for new tribal operations to be developed and win additional amounts of money.

I think you indicated the total U.S. wagering, legal wagering revenue figure. All legal games won $30 billion in 1992. Tribal operations accounted for 5 percent of that, $1.5 billion. They could grow to become a very much larger share and increase that total by a significant amount. Where that exact figure is, where they will reach the limits of people's desire to wager on casino games, we don't know at this point.

Mr. ABERCROMBIE. Does your magazine have an editorial position on some of the issues raised by Congressman Bilbray, Mr. Dworin?

Mr. DWORIN. We would agree with Congressman Bilbray that there should be regulation and there should be an audit trail and there should be background checks of all persons involved in Indian gaming. I am not sure that I would say that should be done for the protection of the Tribes themselves, but I would agree with some of his points, yes.

Mr. ABERCROMBIE. Okay. One last question. I am not as familiar with it because we don't have legal gambling in Hawaii, much to the delight of Mr. Bilbray because I think there are probably more Hawaiians coming to Las Vegas than any other group of people comparatively. There are a couple of hotels in Las Vegas that cater almost exclusively to people from Hawaii, so we are real popular there.

But now that I am up here on the mainland I see places, for example, where they can televise racing off track, and people can bet without ever even having to be at the track. Just using that as a case in point, as an example, has the tribal gambling gotten into that kind of thing, this tremendous variety?

In other words, what came into my mind was there is probably almost an infinite number of ways in which to devise gambling games and activities up to and including electronic transmission television, et cetera, even almost worldwide where you could do it. Has that come into play yet on Indian gaming sites?

Mr. DWORIN. Absolutely. The Sycuan Tribe in southern California has a very active OTB parlor. There are other Tribes that have OTB parlors.

Mr. ABERCROMBIE. So that provides, then, an opportunity for a lot of conflict between State and even interstate regulation and activities as to who is going to derive revenues from taxation, et cetera, in that, right?

Mr. DWORIN. There are conflicts, yes, and there are also some pretty good agreements between Tribes and States and the race tracks.

Mr. ABERCROMBIE. That is the last part of my question then. Both of you in your professional capacities and probably, between you, you have as broad a picture as it is possible for individuals to get. From an overlook point of view, do you think that it is possible to work out agreements, friendly or not? Or perhaps a more accurate question is, Is there something that you see that will be impossible to resolve?

Mr. DWORIN. Would you like to address that, Will?

Mr. ABERCROMBIE. I am very serious about this question because that is where this legislation has to lead. I am sure you will agree, Mr. Chairman, there is no sense in putting out legislation that in the end really is addressing questions that are not resolvable because the various States' interests and the Tribes' interest are so at odds with one another that it simply requires a Draconian decision.

Mr. CUMMINGS. Not having a legal background I can't lay the blame for this.

Mr. ABERCROMBIE. No, I don't really want a legal answer here. I am talking about the human dimension.

Mr. CUMMINGS. There is a lot of ambiguity, uncertainty and differing interpretations in different jurisdictions as to how the existing law can and should be and is being applied, and that I think works to the detriment both of the Native Americans, the States and of the existing legal gambling operations which are regulated by the States.

I think it is also very difficult under the current structure to achieve good regulation of gaming activities. Representative Bilbray spoke at some length about the need for thorough background investigations of the people involved with gaming and of the need to regulate ongoing operations, and that we see being very difficult for mutually satisfactory agreements to be reached between States and Tribes under the current statute.

Mr. ABERCROMBIE. But do you think it can be done?

Mr. CUMMINGS. I think with some further clarity and specification of what the parameters should be, it could be done, yes.

Mr. ABERCROMBIE. Am I able to conclude from that then that you believe some kind of Federal action is required to cut through all this and see that it gets accomplished?

Mr. CUMMINGS. Correct.

Mr. ABERCROMBIE. And that is because this is going to take place anyway, so simply turning our heads away from it won't resolve it and will only continue the animosity or the difficulty?

Mr. CUMMINGS. Correct.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Thank you both.

Mr. DWORIN. May I add one comment, sir? I would agree that there are some ambiguities that need to be reconciled, but from my experience with working with Native American groups and meeting with Native American groups and talking to them and going to their conferences, I am not sure it is going to be resolved without tremendous animosity. There is a loophole that they have seen in the law. If that loophole is closed, I think they are going to feel betrayed.

Mr. ABERCROMBIE. Can you state with a little more finality what that is. I don't want to abuse my time, Mr. Chairman, but that is an important point. I am sure you agree.

Mr. DWORIN. The loophole in the law and the ambiguity that I think Mr. Cummings was referring to is the whole definition not only of Class III gaming but how it is to be applied.

For instance, the Mashantucket Pequots in Connecticut were able to open and operate an enormously successful casino. In fact, they will probably make more money than all of Atlantic City. And they were able to do so because Connecticut offers Las Vegas nights. Connecticut charities, church groups, synagogues, fraternal organizations have Las Vegas nights.

I don't believe it was ever the intent of the authors of the IGRA to allow Indian Tribes to open up casinos on the basis of their being charitable gambling Las Vegas nights in a State, but the courts have ruled that whatever magnitude that particular form of gaming is played can be offered by the Indian Tribes.

Now, if in the revisiting of IGRA that loophole or ambiguity is closed, I think you are going to have tremendous resistance because they are going to say, hey, you wrote the law. We didn't really have much say so in the law. You wrote the law. You gave us this law. We played by the rules. We have gone to your courts. Your courts have ruled in our favor. And now you are saying you don't like the way it has come out. We are going to change that law.

I am not saying it is right. I am not saying it is wrong. I am just telling from you my observations and my meetings with Indian leaders, that is going to happen.

Mr. CUMMINGS. To clarify further, I wasn't referring just to that ambiguity, but there are a wide range of ambiguities: The different interpretations of the 10th Amendment which are applied in different judicial districts; the Rhode Island situation where previous legislation had apparently settled the issue of gaming in Rhode Island, but now it is open once again; the extent to which the State can require that tribes conform to regulatory practices. Those are all issues which create friction and are very difficult to resolve without one side or the other feeling grievously abused under the current framework. Those are all issues that I was referring to.

Mr. ABERCROMBIE. Well, I can assure you that, before all this is through, Mr. Richardson will solve all of these questions. Thank you.

Mr. RICHARDSON. Thank you.

Gentlemen, I would just like to know a little bit about your methodology without obviously divulging proprietary information. How do you arrive at some of the estimates of handle and win for the gaming industry and its parts and especially as it relates to Indian Reservation gaming? What is the methodology—without divulging anything?

Mr. CUMMINGS. Well, the methodologies are different for the different types of games.

Mr. RICHARDSON. I am interested in both of yours.

Mr. CUMMINGS. Our methodologies depend upon the type of game. Pari-mutuel wagering, horse racing, betting on horse and greyhound racing and jai alai is regulated by the States. Every dollar which is bet is registered electronically on a total Zader machine. Every dollar in revenue is calculated by specific statutes regarding the takeout. And all those figures are reported to the State racing commissions.

It is a fairly simple matter to add up, compile those figures and arrive at a number for racing industry handle and revenues. State lotteries report sales and net revenue.

Mr. RICHARDSON. What I am trying to get at, is there a range of, say, 5 percent or 10 percent on either side regarding your estimates?

Mr. CUMMINGS. There is a range.

For Indian gaming, there are no repositories whatsoever, let alone a central repository of statistical information regarding Indian gaming—and we think that is a serious defect of the current structure—we have to go out and do ground work in the field and talk to people. We talk to tribal representatives, to gaming operators, to their competitors. We review media reports concerning the size and configuration of the facilities and levels of traffic and develop estimates.

Yes, there is a range of uncertainty about those estimates.

Mr. RICHARDSON. What do you project right now the eventual size of Indian gaming to be? What proportion, what percentage of the gaming industry?

Mr. CUMMINGS. We can't make such a projection because there are too many ambiguities in the application of the current statute.

Mr. RICHARDSON. All right. How about this question: What proportion eventually of gaming will Indian gaming become?

Mr. CUMMINGS. I have to give the same answer. There are too many uncertainties with regard to how the Act will be interpreted and whether facilities in States X, Y and Z will be allowed at all, let alone how large they will grow.

Mr. RICHARDSON. All right, let's look at the very frenetic activity of Indian gaming this calendar year, 1993. Let's say, if that estimate continues, what percentage would it be?

Mr. CUMMINGS. We are looking at close to another doubling this year. That would bring the total revenues up to around $3 billion, which would be close to 10 percent of total legal gambling.

Mr. RICHARDSON. That is just what I want.

Thank you very much, both of you.

I would now like to call our second panel: Mr. William E. Tabor, Director, Division of Pari-Mutuel Wagering, Department of Business Regulation, State of Florida; Mr. Anthony Chamblin, President of the Association of Racing Commissioners International; and Mr. Gordon Hare, Executive Director, Oklahoma Horse Racing Commission.

I would like to welcome the three of you. We appreciate your being here. Again, our apologies for the hearing taking a little longer than we had hoped for, but, again, we ask that you submit your statement. It will be fully incorporated and ask that you summarize for the record in five minutes.

PANEL CONSISTING OF ANTHONY CHAMBLIN, PRESIDENT, ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL; WILLIAM E. TABOR, DIRECTOR, DIVISION OF PARI-MUTUEL WAGERING, DEPARTMENT OF BUSINESS REGULATION, STATE OF FLORIDA; AND GORDON L. HARE, EXECUTIVE DIRECTOR, OKLAHOMA HORSE RACING COMMISSION

Mr. RICHARDSON. We will now proceed with Mr. Anthony Chamblin, President, Association of Racing Commissioners International.

Mr. Chamblin, welcome to this committee. Please proceed.

STATEMENT OF R. ANTHONY CHAMBLIN

Mr. CHAMBLIN. Thank you, Mr. Chairman, Members of the committee.

My name is Anthony Tony Chamblin, and I am President of the Association of Racing Commissioners International Incorporated, shortened as the RCI, headquartered in Lexington, Kentucky. Formed in 1934, the RCI represents virtually all racing commissions throughout the United States, Canada, Mexico and the Caribbean and associate member groups in North America, including approximately 20 countries throughout the world.

Each State in which legalized pari-mutuel wagering is conducted in this country has at least one regulatory commission. Racing commissioners are responsible for establishing and enforcing rules and procedures promulgated to maintain the integrity of pari-mutuel wagering. Commissioners allocate dates to operators of pari-mutuel facilities and issue operating permits. They provide the standards for inclusion or exclusion of participants and set the parameters of approval for contracts, policies and procedures utilized in pari-mutuel wagering facilities. Our members regulate all forms of horse and harness racing, greyhound racing and jai alai.

In regulatory matters, the RCI office is racing's equivalent of the commissioner's offices in major league baseball, professional football, basketball or hockey. The principal difference is that we deal with the sovereignty of the 43 States in which pari-mutuel wagering is legal. We recommend policy, then leave it to our members to implement and enforce that policy.

The primary role of commissioners is that of unbiased regulators with no vested interest. They are appointed as representatives and protectors of the public trust.

The pari-mutuel industry survives on a base of strictly guarded integrity. Every facet of a commissioner's action is geared toward maintaining the fairness of the contest through internal industry screening and the work of investigatory organizations.

The pari-mutuel industry provides nearly $1 billion a year to State governments in the United States in direct taxes. It is built on public confidence, public confidence which transcends State lines or geographic locations. Our members license approximately 250,000 individuals each year. Several hundred thousand jobs are directly or indirectly related to the industry.

In Kentucky, a recent study done by the University of Kentucky established that number as between 70,000 and 80,000 jobs. As Kentucky Governor Brereton Jones has pointed out, many of those employed would be on the welfare rolls were it not for the agriculture-based racing industry.

The industry employs over 50,000 workers in California, 40,000 in New York and 35,000 in Florida. These jobs are threatened by unfair and unplanned gaming on Indian lands. In the past 10 years, Indian gaming has gone from zero share of the legalized gambling market to a substantial share. During that same period, pari-mutuel wagering's share of the market has dropped from 11.5 percent to less than 6 percent.

The RCI believes that the letter and spirit of Federal legislation enacted by Congress in 1988 to regulate gambling on Indian lands is being violated. We recommend that Congress act swiftly to enact clarifying amendments in order to provide clear guidance to States, Tribes, courts and Federal law enforcement officials who interpret and enforce the law.

The loopholes and ambiguities, some of which have been referred to by previous speakers this morning that have been used by the Tribes and their promoters, have encouraged gambling excesses on Indian lands which undermine the relationship and future cooperation between the Federal, State and Tribal Governments.

The problems associated with regulation of gaming on Indian lands is not solely an Indian matter nor an issue that affects only those States that have Tribes within their borders nor only those States that have authorized high stakes gambling. Rather, it pits a variety of policies and interests—States, Federal officials, the regulated gaming industry and tribes—against one another. Faced with such divergent interests, public policy must carefully balance the rights, duties and responsibilities of all parties.

Congress attempted to strike such a balance when it passed IGRA in 1988. Unfortunately, loopholes in the law, confusion, court decisions and different views of congressional intent have seriously eroded that balance.

The RCI has unanimously passed a resolution regarding gaming on Indian lands, has distributed that resolution to all Congressmen, to all governors. Forty-nine out of fifty governors have supported that resolution by asking for clarification of that act. Our organization asks for that this morning.

Thank you very much for the opportunity to appear here.

Mr. RICHARDSON. Thank you. Let me commend you for your excellent timing. You have scored enormous points with me for precision.

Mr. CHAMBLIN. Thank you, sir.
[Prepared statement of Mr. Chamblin follows:]

TESTIMONY

OF

R. ANTHONY CHAMBLIN

PRESIDENT,

ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL

U. S. HOUSE OF REPRESENTATIVES

COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

WASHINGTON, D.C.

June 25, 1993

Mr. Chairman:

The Association of Racing Commissioners International Inc. (RCI), formed in 1934, represents virtually all racing commissions throughout the United States, Canada, Mexico and the Caribbean and associate member groups in North American and throughout the world. Each state in which legalized pari-mutuel wagering is conducted has at least one regulatory commission.

Racing commissioners are responsible for establishing and enforcing rules and procedures promulgated to maintain the integrity of pari-mutuel wagering. Commissioners allocate dates to operators of pari-mutuel facilities and issue operating permits. Commissioners provide the standards for inclusion or exclusion of participants and set the parameters of approval for contracts, policies and procedures utilized at pari-mutuel facilities.

Our members regulate all forms of horse and harness racing, dog racing and jai-alai. In a sense, the RCI office is the pari-mutuel sports equivalent of the commissioners' offices in major league baseball, professional football, basketball or hockey. The difference is that whereas the commissioners of those sports have rather broad authority, we deal with the sovereignty of the 43 states in which pari-mutuel wagering is legal. We recommend policy, then leave it to our members to implement, and enforce, that policy.

The primary role of commissioners is that of unbiased regulators. They are appointed as representatives, and protectors, of the public trust. The pari-mutuel industry survives on a base of strictly-guarded integrity. Every facet of a commissioner's action is geared toward maintaining the fairness of the contest, through internal industry screening and the work of investigatory organizations.

The pari-mutuel industry, which provides nearly one billion dollars a year to state governments in the U.S. in direct taxes, is built on public confidence--public confidence which transcends state lines or geographic locations. Without confidence, the public will not wager; without wagering, the pari-mutuel industry will not survive.

Members of our Association license approximately 250,000 individuals each year. Several hundred thousand jobs are directly or indirectly related to the pari-mutuel industry. In Kentucky alone, a University of Kentucky study established that number at over 72,000. As Kentucky Gov. Brereton Jones has pointed out, many of those employed would be on the welfare rolls were it not for the agriculture-based racing industry.

In New York State, Gov. Mario Cuomo's Advisory Commission on Racing in the 21st Century found that the industry employs over 40,000 workers.

The RCI is a non-stock, non-profit corporation with the following purposes:

a) To encourage a forceful regulation of North American racing and wagering for the protection of the sport, the contestants and the public.

b) To recommend rules and regulations to governmental boards and regulatory agencies for the effective conduct of race meetings, wagering and related pursuits.

c) To study, research and discuss the needs and problems in the regulation of racing and wagering.

d) To assist governmental boards, commissions and regulatory agencies in the performance of their duties.

e) To assemble and disseminate pertinent information and data concerning racing and wagering.

f) To encourage the adoption and implementation by governmental boards, commissions and regulatory agencies of a uniform procedure and system of reciprocity in enforcing the rules, regulations and penalties imposed by the authority of each governmental board, commission or agency.

g) To exert every effort which is right and proper to regulate, protect and nurture the racing and wagering industry and to preserve and enhance public confidence in the same.

h) To engage in any other act, in furtherance of, or in any way connected with, any of the aforesaid purposes and the achievement thereof, to the extent permitted by law.

The RCI believes that the letter and spirit of federal legislation enacted by Congress in 1988 to regulate gambling on Indian lands is being violated. We recommend that Congress act swiftly to enact clarifying amendments in order to provide clearer guidance to States, tribes, courts and federal law enforcement officials who interpret and enforce the law. The loopholes and ambiguities used by the tribes and their promoters have encouraged gambling excesses on Indian lands which undermine the relationship and future cooperation between the federal, State and tribal governments.

The problems associated with regulation of gaming on Indian lands is not solely an "Indian matter," nor an issue that affects only those States that have tribes within their borders, or only those States that have authorized high-stakes gambling. Rather, it pits a variety of policies and interests--States, federal officials, the regulated gaming industry, and tribes--against one another. Faced with such divergent interests, public policy must carefully balance the rights, duties and responsibilities of all parties. Congress attempted to strike such a balance when it passed the 1988 Indian Gaming Regulatory Act (IGRA). Unfortunately, tribal efforts to exploit loopholes in the law, combined with uneven federal enforcement, confusion among State officials, ill-reasoned court decisions, and a revisionist view of Congressional intent, has seriously eroded that balance.

The current RCI Resolution on Indian Gaming, passed unanimously in 1992, follows:

RESOLUTION

The Association of Racing Commissioners International hereby petitions the United States Congress, the Executive Branch and all State Government to examine these issues:

WHEREAS, the RCI is the national organization representing all State racing regulators for the past 58 years;

WHEREAS, the pari-mutuel racing industry has an annual economic impact of billions of dollars and employs hundreds of thousands of people;

WHEREAS, the letter and the spirit of the Indian Gaming Regulatory Act enacted by Congress in 1988 to regulate gaming on Indian lands is being violated;

WHEREAS, the ambiguities in the Indian Gaming Act of 1988 are infringing upon the rights of States and the non-Indian gaming industry;

WHEREAS, the gaming activities currently occurring or planned on Indian lands have undermined the economic viability and threatened to destroy the positive economic impact of the pari-mutuel racing industry;

WHEREAS, the tribes' continued efforts to exploit the ambiguities in this law have resulted in confusion among Federal and State officials, a proliferation of litigation and conflicting federal court decisions; and

WHEREAS, the RCI declares that the ambiguities in the Act have created a crisis that threatens the health, welfare and safety of all Americans, as well as, undermines the relationship and future cooperation between Federal, State and tribal governments;

THEREFORE, the Association of Racing Commissioners International hereby resolves that Congress must act swiftly to enact clarifying amendments to the 1988 Act;

And that Congress work with the RCI and other affected parties in crafting solutions to this national problem.

Unfair and unplanned gaming on Indian lands is acting to, or has the potential to, cripple or destroy the pari-mutuel racing industry, causing job and revenue losses.

I emphasize that we are not seeking to prevent Indian competition--we are seeking to insure that such competition is fair. The 1988 Act has fallen short of that goal--it must be amended this year before further damage is done. This is a political issue in which Congress must provide a level playing field for both the States and the Indians.

ON May 26, 1993, Senators Harry Reid (D-NV) and Dick Bryan (D-NV) and Congressman Bob Torricelli (D-NJ) held a joint press conference to announce the introduction of legislation to amend the Indian Gaming Regulatory Act of 1988 (S.1035/HR 2287). Co-sponsors of the bill include Senator Bob Graham (D-FL) and Alan Simpson (R-WY) and Congressmen Peter Hoagland (D-NB), Ken Calvert (R-CA), Bob Stump (R-AZ), and Jim Bilbray (D-NV), and Congresswoman Barbara Vucanovich (R-NV).

The Reid/Bryan-Torrecelli bills would address most of the problems experienced by the States and the non-Indian gaming industry. They follow along the lines of Congressman Peter Hoagland's bill which was first introduced last year. The bills would:

* Limit compact negotiations between tribes and States for both Class II as well as Class III gaming to those games specifically allowed under State law.

* Clarify that State-sponsored "charitable" gaming would not allow Indians to play commercial versions of those games.

* Write into law the regulations of the National Indian Gaming Commission which has correctly interpreted the intent of the 1988 law to prevent slot machines and video gaming devices from being considered as Class II devices, and therefore beyond the control of State law.

* Limit gaming on non-contiguous lands taken into trust after the date of IGRA's enactment (Oct. 17, 1988), and restrict gaming activities to only those tribes recognized before the enactment of IGRA.

* Transfer from the tribes to the federal government the right to sue States violating IGRA, and furthermore place the burden on the federal government to show a State is acting in bad faith.

In addition to these changes and others, the bills would also solve the Indians' concerns with the 10th and 11th Amendment defenses that have been used by the States, and would offer some relief to tribes that want to unhook from management contracts. In summary, these bills provide comprehensive "fixes" to the problems of gaming on Indian lands.

Forty-nine Governors have gone on record as wanting the IGRA clarified in the way that the RCI wants it clarified. Only Gov. Joan Finney of Kansas has expressed opposition.

Gov. Roy Romer of Colorado has previously testified on behalf of the National Governors Association. Romer's testimony focused on whether a state and its citizens should have the ability to prevent casino gambling within the borders of the state. He described as "very offensive" and contrary to "the basic element of democracy" the notion that a state can be forced to tolerate casino gambling even though the people of the state have clearly expressed their opposition to it. Romer testified that the state and the tribes must work together toward developing economic opportunities for the Indian tribes, but cautioned that casino gambling--unless consistent with state law--was not the means to achieve a better standard of living for the Indians.

Congress may have thought that it "solved" the Indian gaming problem in 1988 by passing IGRA. Unfortunately, the implementation of the Act has reopened some of the original controversies the law was intended to solve and has created new tensions between States and tribes.

The symptoms of the problem are easy to see. Sporadic law enforcement by federal prosecutors has caused confusion, and in some cases has allowed tribes to engage in blatantly illegal actions. The Act has spawned litigation as tribal attorneys move to federal courts on a variety of issues related to Class II and III gaming. There is a great deal of misinformation and bad advice being shopped to tribes and States alike by individuals who have a vested interest in seeing tribal gaming activities include forms of gambling not otherwise permitted by the States, despite the clear Congressional intent to the contrary.

The Act's failure to be perfectly clear regarding what gambling is permitted on reservations has ensured the proliferation of high-stakes commercial casinos and other forms of high-stakes gambling in States whose laws and public policies prohibit it.

Section 11(d) of the Act provides that Class III gaming activities are lawful on Indian lands only if they are:

(A) authorized by Tribal ordinance or resolution;

(B) located in a State that permits such gaming for any purpose by any person, organization or entity; and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and State.

A Wisconsin court decision has held that the existence of any form of Class III gaming in the State opens up the State to all forms of Class III gambling on reservations and forces the State to accept such gambling, even if State law specifically prohibits it. It is doubtful any member of Congress voting on the Act shared the Court's view. Rather, Congress believed, as the statute says, the Act requires States to negotiate with tribes only for the particular form of Class III gambling that is legally authorized for some person, organization or entity for some purpose. If upheld, this decision effectively nullifies this provision of the Act.

The decision has been appealed to the Seventh Circuit. It has so alarmed the States that sixteen have signed an amicus curiae brief in support of Wisconsin's appeal.

If tribes are allowed to conduct gaming activities not legally authorized by a State, Congress' goal of consistency and uniformity will not be realized.

This problem is most dramatically illustrated by the situation in Connecticut, which permits charitable gaming. In March 1989, the Mashantucket Pequot Tribe, located in Ledyard, asked the governor to negotiate a compact regarding the conduct of expanded gambling on its reservation. When the State determined from initial discussions that the tribe wanted to construct and operate a commercial casino on its reservation, it refused to negotiate a compact for the operation of a high stakes commercial casino since commercial casino gaming is illegal in Connecticut.

The tribe went to court and after lengthy litigation going all the way to the Supreme Court, the State was forced to allow the construction of a full-blown commercial casino in Ledyard, even though the operation of a commercial casino by a non-Indian would be a violation of the criminal law of Connecticut. Because Connecticut sanctions "Las Vegas Nights" by charitable organizations, the district court found this activity sufficiently similar to casino gambling as to amount to "such gaming" under the Act and require the State to negotiate with the tribe regarding the operation of a casino.

The result is a $58 million casino boasting 170 gaming tables offering baccarat, craps, roulette, blackjack and poker. It is the first major casino in the East outside Atlantic City. It was financed not by American Indians or Connecticut banks, but by Malaysian developers. And it was not voted upon in a Statewide referendum by a single Connecticut citizen.

The decision in the Connecticut case is being cited by tribes as precedent that charitable gaming statutes authorize commercial casinos on reservations.

Connecticut suggests that this result is "illogical, unintended by Congress, and evidences an utter disregard for the sovereignty of the State and its particular public policy." It would be hard for fair-minded people to disagree. The Connecticut legislature has consistently refused to legalize casino gambling in the State and has determined that there should be no expansion of gambling.

Seven States--Arizona, Iowa, Louisiana, Mississippi, Nebraska, North Dakota and Wyoming--filed a brief in support of Connecticut's petition for a writ of certiorari to the U.S. Supreme Court. These States wanted a clearer definition of the requirements of the Act, which some believe now compels them to permit commercial gambling on Indian reservations, even though "such gaming" is against State law and public policy and is prohibited for non-Indians.

The Act does not require that a compact be concluded or that every demand by a tribe be satisfied. It simply requires a good faith effort by the State to address tribal requests while attempting to reconcile those requests with the State's public policy towards gaming.

Nonetheless, the Act neither specifically addresses the impact of a decision such as that in Wisconsin nor the degree to which charitable gaming statutes must influence a State's posture in compact negotiation. Those States that have attempted to impose restrictions similar to those included in a charitable gaming statute, for example, have met with stiff resistance and legal challenge from tribes. To date, the States have been reluctant to impose charitable gaming limits on tribes because of a fear that the courts will find that they have not negotiated in "good faith" and will, in effect, take the process out of their hands. The States' fear is warranted.

It was not the intent of Congress to force States to abrogate their public policy responsibilities as part of a negotiation. Still decisions by the courts and pressures by tribes have put States on the defensive regarding their negotiating positions.

It is highly unlikely that subsequent enforcement efforts by State and federal officials can cure all these problems without further legislation. Therefore, Congress should step forward to clarify Congressional intent, and prevent further confusion, controversy and unnecessary litigation.

It is time to repeal provisions in the 1988 Act allowing new lands to be taken into trust for gaming purposes so that the sovereign rights of the States are not violated and so that all parties--the States, the tribes and the regulated gaming industry--can better plan their regulatory and economic futures.

The National Indian Gaming Commission has proposed regulations (25 CFR Part 502, FR, Nov. 1, 1991) which are consistent with Congressional intent regarding video facsimiles of games of chance, but these regulations are not final.

Depending on the outcome of the Commission's regulations, it is possible that Congress will have to amend the Act to be more explicit in dealing with electronic gaming devices so that tribes and their promoters who are currently operating outside the parameters of IGRA will have not alleged "ambiguity" to justify continued violations of the Act.

The Act must be clarified in these areas to reflect the original intent of Congress with respect to the "level playing field."

The term "such gaming" must be shown to refer to the specific type of game involved, rather than an open-ended definition as enunciated by the Wisconsin Court. The Act should also be amended to recognize the right of a State to establish a public policy which protects its citizens from the social consequences of high-stakes commercial gambling on Indian reservations, without a referendum, while still permitting limited forms of gaming for charitable purposes.

Finally, the cornerstone of the Act, the tribal-State compact process, must be clarified to indicate that a State is not negotiating in bad faith if it simply seeks to limit a tribe's gambling operation to square with the State's public policy on gambling.

Without such changes, gambling on Indian reservations will continue to expand with no regard for the laws or policies of the various States in which reservations are located.

SUPPLEMENTAL

R. Anthony Chamblin
President
Association of Racing Commissioners International, Inc.
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SUMMARY

Mr. Chamblin presented an overview of the purposes of the Association of Racing Commissioners International, Inc. and the Association's Resolution on Indian Gaming, as adopted in 1992.

He addressed proposed current legislation in Congress which would correct most of the problems experienced by the States and the non-Indian gaming industry with regard to the 1988 Indian Gaming Regulatory Act.

He cited examples of confusion, misinformation and litigation resulting from the Act and the impact, or potential impact, on "several hundred thousand" employees in the agricultural-based racing industry.

He noted that 49 State governors support the ARCI's views that the Act needs clarification and he recommended ways in which the Act should be amended.

"Without such changes," Mr. Chamblin said, "gambling on Indian reservations will continue to expand with no regard for the laws or policies of the various States in which reservations are located."

Mr. RICHARDSON. Mr. Tabor, please proceed.

STATEMENT OF WILLIAM E. TABOR

Mr. TABOR. Thank you, Mr. Chairman.

My name is Bill Tabor, and I wish to thank the committee for allowing me the opportunity to address a major problem that confronts Florida today concerning the implementation of the Indian Gaming Regulatory Act.

At this moment, Florida is awaiting the decision from a Miami district court as to whether the State acted in good faith when it rejected a request by the Seminole Tribe of Florida to conduct numerous forms of Class III gambling that are today illegal in Florida. Their request to operate video slot machines, roulette wheels, banking and nonbanking casino games, dice games and other forms of casino wagering goes against the wishes of the State of Florida.

The Seminole's request and the ensuing lawsuit were made pursuant to the IGRA. At stake is the introduction of casino gambling in Florida. This situation exists despite the fact that Florida citizens and their legislature have consistently and overwhelmingly rejected casino gambling.

Let me just emphasize to what extent we have rejected casino gambling. Floridians have twice rejected casino gambling in statewide referendums. In 1978, 71 percent of Florida voters rejected a proposal that would have allowed casino gambling on just a 16-mile stretch in Miami. In 1986, voters by a margin of two to one rejected a measure that would have allowed a county-by-county referendum on casino gambling. And in 1982, 1984 and 1991 pro-casino forces were not even able to get the measure on the ballot. Bills introduced into the Florida legislature that would allow for even a single form of casino wagering seldom get out of committee.

In describing what classes of gambling are permitted by Native Americans, the IGRA provides for gambling if the individual State permits such gambling for any person.

Several speakers have now mentioned the loopholes, and that, again, is what I am speaking of. Very simply, one of the biggest problems is the use of the word "permitted" as opposed to the use of the word "legal." If this statute read gambling forms that are legal, we might have a different result, especially in Florida.

A second related issue is whether a State must agree to allow Native Americans to conduct all forms of Class III wagering, even if the State legalizes only one. The State of Florida agrees that Native Americans may conduct any form of gambling that is legal in our State. However, we believe that it is ludicrous to permit the Seminole Tribe to initiate casino gambling given the overwhelming opposition shown by Florida citizens.

Floridians made a careful, conscious decision when they allowed pari-mutuel wagering and the State-run lottery. In passing the State-run lottery, we in Florida were confident that we could ensure the integrity of the games without an increase in crime and still add nearly a billion dollars a year in tax revenue.

The business of pari-mutuel wagering in Florida has created major economic spin-off benefits for the thoroughbred breeding industry and provides jobs for more than 35,000 people. At the same time, Floridians have watched the escalation of crime in Atlantic

City following the introduction of casino gambling. The total crime index for Atlantic City, New Jersey, has risen 245 percent between the years 1977 and 1989. By comparison, the crime index for all of New Jersey rose only 9 percent.

The people of Florida recognize those statistics and continue to make the conscious decision to reject the problems associated with casino gambling.

I am going to close by telling you that Governor Lawton Chiles is one of Florida's most ardent and outspoken opponents of casino gambling. The Governor wishes that I make you aware that he was Florida's senior senator when the IGRA was passed in 1988 and that he voted for the Act because of his firm commitment to the betterment of Florida's Native Americans.

However, the Governor opposes the introduction of any form of casino gambling that this Act will enable and, like many Members of Congress, did not believe that passage of the IGRA would usurp the will of the people in any State or give Native Americans rights greater than we afford others in our State, and the fairness requires that Native Americans should be entitled to the same rights that we afforded other citizens.

On behalf of the State of Florida, we strongly urge you to consider amending this Act to better balance the rights of Native Americans with those of the citizens of Florida.

Thank you.

Mr. RICHARDSON. Thank you, Mr. Tabor.

[Prepared statement of Mr. Tabor follows:]

Remarks by William E Tabor
Director, Division of Pari-Mutuel Wagering,
Florida Department of Business Regulation
Before the House Natural Resources Committee
Subcommittee on Native American Affairs
Friday, June 25, 1993

I am delighted to be here this morning, and I wish to thank the members of this subcommittee for allowing me an opportunity to address a major problem our state now faces with the implementation of the Indian Gaming Regulatory Act (IGRA).

Florida is awaiting the decision of a Federal District Court in Miami as to whether the state acted in bad faith when it rejected a request by the Seminole Tribe of Florida to conduct numerous forms of Class III gambling that are today illegal in Florida. Their request to operate video slot machines, roulette wheels, banking and non-banking casino card games, dice games and many other forms of casino wagering goes against the wishes of the citizens of Florida. The Seminole's request and the ensuing lawsuit were made pursuant to the IGRA. At stake is the introduction of casino gambling in Florida. How can this occur despite the fact that Florida citizens and their Legislature have consistently and overwhelmingly rejected casino gambling?

As a historical note, twice Floridians have expressed their disfavor for casino gambling in statewide referendums. In 1978 by a margin of 71% to 29%, the citizens rejected a proposal to allow casino gambling on a 16 mile stretch of Miami Beach. Eight years later voters again rejected a scaled down version of casino gambling which would have permitted gambling at hotels with room capacities of 500 or more provided each separate county approved casino gambling in a local referendum. That effort was defeated by a margin of greater than two to one. Public sentiment against casino gambling is so adamant that the pro-casino gambling groups have failed in their attempts to get the issue on a ballot as a referendum in 1982, 1984 and in 1991.

In recent history, the Florida legislature has considered Legislation on various forms of casino gambling nearly every year, and each time the Legislation is rejected. In fact, many bills which provide for a very limited form of casino gambling never even get out of a committee. Last year, despite the fact that dozens of lobbyists were dispatched to Tallahassee by companies that manufacture and operated gaming machines, their hard fought measure to legalize video slot machines was defeated on the House floor and the Senate companion bill never passed out of Committee. Had any legislation passed, Governor Lawton Chiles, with the support of the citizens of Florida, pledged a veto.

I do not believe that Congress intended the will of the citizens of Florida, or any other state, be usurped by the passage of the Indian Gaming Regulatory Act. I am here today on behalf of the State of Florida to ask that you consider the problems that the implementation of this Act has created in Florida and to seek solutions.

In describing what Classes of gambling are permitted by Native Americans, the IGRA provides for gambling that is now legal if the individual state "permits such gaming for any person for any purpose". It is legal in Florida to conduct a limited number of Class III gambling activities. These include wagering on thoroughbred horses, greyhound racing, jai-alai games and a state operated lottery. However, Native Americans in Florida want to conduct all forms of Class III gambling despite the fact that the will of a majority of citizens is otherwise. It is their contention that they are not limited to just gambling activities that are otherwise legal. Had the Act simply allowed Native Americans to conduct those forms of gambling which "are legal for any person", instead of those which are "permitted", I would not be here today, nor would the State be in Federal Court. The problems center around what is meant by "permits such gaming".

If a state allows limited forms of Class III gambling, must that state then enter into a compact with Native Americans permitting any and all forms of Class III gambling whether these forms are legal or not in such state? Native Americans will argue that it does while Florida believes it does not. If the interpretation of the IGRA by Native Americans is correct, does this mean Indians could also run their own lottery? Floridians voted in favor of a state run lottery with 50% of the money spent on lottery tickets going to enhance education. Would the Native Americans that ran a lottery in Florida be held to this requirement?

The State of Florida agrees that our Native Americans can conduct any form of gambling that is legal in our state. In fact, earlier this week I participated in ongoing negotiations with the Seminole Tribe of Florida to initiate casino gambling given Florida's history of overwhelming rejection of casino gambling.

As you know, the IGRA requires that each state and that state's resident Native Americans negotiate regulation for the type of gambling the Native Americans want to conduct. The apparent inference is that each state will rely on its expertise in regulating particular forms of gambling now legal in their state. How can Florida, which employs experts in the regulation of pari-mutuel wagering have any expertise to begin to negotiate the regulation of a form of gambling so vastly different and complex as casino gambling? Surely Congress did not intend to put the states in such an impossible situation. Consider that Florida recently passed a law legalizing penny ante poker games when the games are played in someone's residence and when the "pot" is limited to no higher than $10. Does this mean that now Native Americans can conduct high stakes poker games in a commercial setting? This was never the intent of the chief policy making body in Florida, our elected state legislators.

Today Florida has a solid regulatory structure in place to carefully monitor and control wagering on pari-mutuels races and games, and participation in the state operated lottery so the public will be guaranteed a fair chance with their wagering dollars. The citizens of Florida have made clear their choice to permit limited forms of Class III gambling and then only when these forms are either operated by, or closely regulated by the state. In passing the state operated lottery, we were confident that we could ensure the integrity of the games without an increase in crime while adding nearly a billion dollars a year to enhance education. The business of pari-mutuel wagering in Florida has created major economic spin-off benefits for the thoroughbred breeding industry. This industry alone has created an economic impact of nearly four billion dollars per year in central Florida and directly provided jobs for more than 35,000 people. These are real dollars being created, and not a mere shifting of money.

We in Florida have watched the escalation of crime in Atlantic City following the introduction of casino gambling. The total crime index for Atlantic City has risen 245 percent from 1977 to 1989. By comparison, the crime index for all of New Jersey rose only 9 percent. During those same years, fraud increased by 175 percent and narcotics arrests by 160 percent in Atlantic City. The people of Florida recognize those statistics and continue to make a conscious decision to soundly reject the calamities associated with casino gambling.

Nevertheless, under this Act Florida will be required to allow types of gambling that are illegal in our state today without so much as the voice of the citizens being considered. The Act provides for a 60 day period to negotiate a compact and thereafter it is conceivable that casino gambling will be operated before the end of August in a state where the citizens have flatly and firmly rejected casino gambling every chance they get.

Allow me to close by telling you that Governor Lawton Chiles is one of Florida's most ardent and outspoken opponents of casino gambling. The Governor wishes that I make you aware that he was Florida's senior United States Senator when the IGRA was passed in 1988, and that he voted for the Act because of his firm commitment to the betterment of Florida's Native Americans. However, the Governor opposes the introduction of any form of casino gambling that this Act will enable, and like many members of Congress did not believe that passage of the IGRA would usurp the will of the people in any state or give Native Americans rights greater than we afford others in our state and fairness required that Native Americans should be entitled to the same rights we afforded our other citizens. On behalf of the state of Florida, we strongly urge you to consider amending this Act to better balance the rights of Native Americans with those of the citizens of Florida.

Mr. RICHARDSON. Mr. Gordon Hare, Executive Director, Oklahoma Horse Racing Commission. Welcome. Please proceed.

STATEMENT OF GORDON L. HARE

Mr. HARE. Thank you.

Mr. Chairman, during 1989 the Oklahoma Horse Racing Commission was asked by Oklahoma Governor Henry Bellmon's office to consider providing regulatory supervision of pari-mutuel horse racing for the Comanche Tribe of Oklahoma under the terms and conditions of a Tribal–State Compact. After a number of informal meetings with representatives of the Tribe and the Governor's office, the Commission heard a formal presentation of the proposed compact at its January 18, 1990, meeting.

As explained then by the Governor's representative and negotiator, a resolution and compact presented to the Racing Commission provided two options to the Commission: One, accept the resolution and provide regulation for the Tribe; or, two, reject the resolution which would result in the Commission having no regulatory responsibility for Indian gaming under that Tribal–State Compact.

At the meeting, the Commission received public testimony regarding the proposed compact, asked questions of tribal representatives, their counsel and the Governor's representative, discussed the matter at length publicly and voted unanimously—7 to 0—to decline to adopt the proposed resolution approving Commission regulatory supervision as prescribed by the compact.

In reaching its decision, the Racing Commission considered all provisions of the Federal Indian Gaming Regulatory Act, the proposed compact and other relative considerations including specific issues of concern about the compact, namely:

One, that the Racing Commission, although a body experienced in consideration of such matters, would not have much to say about the Tribe's financing plan, financing arrangements or the identity and integrity of the financing or financiers;

Two, that the feasibility study provided by the Tribe failed to address the availability of race horses for the proposed facility and also failed to convince the Commission of the overall financial feasibility of the proposal;

Three, that the commissioners observed they personally had taken an oath when accepting appointments as commissioners to generate public revenue, the likelihood of which was greatly diminished under the terms of the compact, and that revenue projected to the Comanche was optimistic and suspect in light of the potential for unregulated participation through contracts and agreements by non–Tribe entities;

Four, exclusions in the proposed compact from certain Commission Rules of Racing and the Oklahoma Horse Racing Act regarding simulcasting provisions and the Commission's ability to discipline the Tribe if warranted;

Five, that the Commission would ultimately have little to say about the number of race days or performances the racetrack would operate or conduct which could lead to oversaturation of the gaming market in Oklahoma, given the existing five pari-mutuel racetrack licensees in Oklahoma with a State population of only 3.1 million;

And, six, significant unclear provisions of the Indian Gaming Regulatory Act coupled with the unsettling fact that the proposed Federal Gaming Commission had not yet been formed or funded.

In short, over three years ago the Commission—the Oklahoma Racing Commission, that is—wished the involved parties well with their proposal but declined to provide regulatory supervision under terms which the Commission felt would inhibit and in some instances prevent proper racing supervision. Nonetheless, the Governor and the Comanche executed a Tribal–State Compact for a live racing and simulcasting facility to be constructed near Lawton, Oklahoma. The project has to date not materialized.

However, the Oklahoma experience with compacts continues. Compacts with the Tonkawa Tribe and the Miami Tribe for parimutuel simulcasting facilities are presently before Governor David Walters for signature.

Insofar as the Oklahoma experience, as I have described it, addresses some regulatory apprehensions and difficulties at the State level, the following summary comment is offered to the subcommittee for your consideration:

If State participation and supervision, which extends to regulation within Tribal–State Compacts, ever was or is anticipated by provisions of the Indian Gaming Regulatory Act, then meaningful State supervision must be made possible and more clearly defined in the Federal law. Otherwise, even though compacts may continue to be negotiated between a Tribe and a State, not much more than lending a State's name will have taken place. State regulatory substance will be missing from the process.

I thank you.

Mr. RICHARDSON. I thank the gentleman also for his statement.

[Prepared statement of Mr. Hare follows:]

STATEMENT PRESENTED TO THE
SUB-COMMITTEE ON NATIVE AMERICAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 1993 - WASHINGTON, D.C.

by

Gordon L. Hare, Executive Director
Oklahoma Horse Racing Commission

During 1989, the Oklahoma Horse Racing Commission was asked by Oklahoma Governor Henry Bellmon's office to consider providing regulatory supervision of pari-mutuel horse racing for the Comanche Tribe of Oklahoma under the terms and conditions of a Tribal-State Compact. After a number of informal meetings with representatives of the Tribe and the Governor's office, the Commission heard a formal presentation of the proposed Compact at its January 18, 1990, meeting.

As explained by the Governor's representative and negotiator, a Resolution and Compact presented to the Racing Commission provided two options to the Commission: (1) Accept the Resolution and provide regulation for the Tribe; or (2) Reject the Resolution, which would result in the Commission having no regulatory responsibility for Indian gaming under that Tribal-State Compact.

At the meeting, the Commission received public testimony regarding the proposed Compact, asked questions of the Tribal representatives, their counsel, and the Governor's representative; discussed the matter at length publicly; and voted unanimously (7-0) to decline to adopt the proposed Resolution approving Commission regulatory supervision as prescribed by the Compact.

In reaching its decision, the Racing Commission considered all provisions of the Federal Indian Gaming Regulatory Act, the proposed Compact, and other relative considerations, including specific issues of concern about the Compact, namely, (1) that the Racing Commission (although a body experienced in consideration of such matters) would not have much to say about the Tribe's financing plan, financing arrangements, or the identity and integrity of the financing or financiers; (2) that the feasibility study provided by the Tribe failed to address the availability of race horses to the

-over-

proposed facility and flatly failed to convince the Commission of the overall financial feasibility of the proposal; (3) that the Commissioners observed that they personally had taken an oath when accepting appointments as Commissioners to generate public revenue, the likelihood of which was greatly diminished under the terms of the Compact, and that revenue projected to the Comanche was optimistic and suspect in light of the potential for unregulated participation through contracts and agreements by non-Tribe entities; (4) exclusions in the proposed Compact from certain Commission Rules of Racing and the Oklahoma Horse Racing Act regarding simulcasting provisions and the Commission's ability to discipline the Tribe if warranted; and (5) that the Commission would ultimately have little to say about the number of race days the racetrack would operate, which could lead to over-saturation of the gaming market in Oklahoma given the existing five pari-mutuel racetrack licensees in Oklahoma with a State population of only 3.1 million; and (6) significant unclear provisions of the Indian Gaming Regulatory Act with the unsettling fact that the proposed Federal Gaming Commission had not yet been formed or funded.

In short, the Commission wished the involved parties well with their proposal but declined to provide regulatory supervision under terms which the Commission felt would inhibit and in some instances prevent proper racing supervision. Nonetheless, the Governor and the Comanche executed a Tribal-State Compact for a live racing and simulcasting facility to be constructed near Lawton, Oklahoma. The project has to date not materialized. However, the Oklahoma experience with Compacts continues. Compacts with the Tonkawa Tribe and the Miami Tribe for pari-mutuel simulcasting facilities are presently before Governor David Walters for signature.

Insofar as the Oklahoma experience, as described, addresses some regulatory apprehensions and difficulties, the following summary comment is offered to the Sub-Committee for consideration:

If state participation and supervision, which extends to regulation within Tribal-State Compacts, ever was or is anticipated by the provisions of IGRA, then meaningful state supervision must be made possible and more clearly defined in the Federal law. Otherwise, even though Compacts may continue to be negotiated between a tribe and a state, not much more than lending the state's name will have taken place. State regulatory substance will be missing from the process.

Mr. RICHARDSON. Let me just say that the gentlelady from Oregon, Representative Elizabeth Furse, has joined us, and the Chair would recognize her for any statement she wishes to make.

Ms. FURSE. Thank you, Mr. Chairman. I am just here to listen. I am very interested in this issue. We have this issue in Oregon, and I am interested in the testimony.

Thank you.

Mr. RICHARDSON. I thank the gentlelady.

Let me proceed with just some statistical information.

What is the tax rate for gaming in your states?

Mr. HARE. The tax rate originally was 6 percent established by the legislature and revised downward to basically 2 percent across the board. There is a sliding scale and some provisions for a difference in exotic wagers, Pick Six wagers, but it is basically 2 percent across the board to the State. And the balance of it is distributed between the racetrack for putting on the show, so to speak, and the horsemen in the way of horsemen's purses.

Mr. TABOR. The tax rate in Florida for greyhound is 7.6 percent, jai alai 7.1 and thoroughbred racing 3.3. The total dollar amount for per year is about $100 million.

Mr. RICHARDSON. Is there a percentage that you could give me that reflects how much of the gaming revenues go into the State coffers and how much goes to the operator? Would that statistic be available? Would you have that?

Mr. TABOR. Not readily on my part.

Mr. RICHARDSON. Could you provide it for the record?

Mr. TABOR. I certainly could provide it for the committee.

[The information follows:]

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Lawton Chiles
Governor

July 6, 1993

The Honorable Bill Richardson, Chairman
U. S. House of Representatives
Subcommittee on Native American Affairs
1522 Longworth House Office Building
Washington, D. C. 20515-6201

Dear Congressman Richardson:

It was my pleasure to address the Subcommittee regarding Indian Gaming on June 25, 1993. During the meeting you questioned what amount of pari-mutuel wagers is retained by the race tracks and jai alai frontons in Florida. For the Subcommittee's official hearing record, I have attached a schedule which shows the components of total pari-mutuel handle in Florida for the fiscal year ended June 30, 1992, the last year for which complete data is presently available. The schedule also reflects a breakdown of the total dollars wagered for each industry.

As you will see from the schedule, the amount of handle that Florida tracks and frontons retained during the fiscal year was $284,458,864, or 16.07% of the total amount wagered. Please be aware that this is the gross proceeds from wagers, before expenses. From these proceeds the facilities pay all direct costs, including purses and salaries, as well as indirect costs such as interest. Additionally, pari-mutuel facilities earn additional revenue from admissions, parking, and concession charges which are not reflected in the schedule.

We are in the process of compiling pari-mutuel wagering data for the year ended June 30, 1993, and should have updated information by the end of July. If I can provide you or your staff with updated data or any other information, please call me at 904/488-9130.

Sincerely,

William E. Tabor
Director

cc: Acting Secretary George Stuart

Components of Pari-Mutuel Handle
For the State of Florida
Fiscal Year Ended June 30, 1992

	TAX TO STATE	TO TRACK	TO PUBLIC	BREEDER'S AWARD	TO CHARITY	TOTAL HANDLE
GREYHOUND	$67,822,244	$131,503,411	$717,947,614		$1,622,478	$918,895,747
JAI ALAI	$16,314,729	$37,871,546	$190,667,667		$297,087	$245,151,029
THOROUGHBRED	$13,555,616	$98,472,133	$414,342,486	$3,986,192	$113,749	$530,470,176
HARNESS	$985,109	$16,069,636	$55,745,669	$446,342	$15,748	$73,262,504
QUARTER HORSE	$22,000	$542,138	$2,060,542	$30,279		$2,654,959
TOTALS	$98,699,698	$284,458,864	$1,380,763,978	$4,462,813	$2,049,062	$1,770,434,415
PERCENT	5.57%	16.07%	77.99%	0.25%	0.12%	100.00%

Source: Florida Division of Pari-Mutuel Wagering 61st Annual Report

Mr. CHAMBLIN. Mr. Chairman, as a point of clarification, are we talking about tax on handle, not on revenues?

Mr. RICHARDSON. Correct.

Mr. CHAMBLIN. Generally speaking, there is a 20 percent takeout nationally of the handle, takeout. Some people call it tax. We prefer to call it takeout. And of that 20 percent about 4 percent goes to the State governments, and the balance goes to the racing associations which are the tracks, and that is generally divided on an equal basis 8 percent to the track and 8 percent in form of purses. That is the general formula in horse racing.

In greyhound racing, it is a little different. There is less money going into purses.

Mr. RICHARDSON. Now you are all experienced regulators. How would you suggest that Indian gaming be best regulated? Why don't we start with you, Mr. Chamblin. What would you do? Give me some specifics that perhaps we could do right away without necessarily amending the Act.

Mr. CHAMBLIN. Well, I don't think it can be done without amending the Act. If it were regulated the same way that pari-mutuel wagering is regulated at the State level now, I would certainly recommend that that be done and that the main goal that regulators have—and I am sure that the industry as well wants—is to create a level playing field for all concerned. So, however that can be achieved, that should be the objective.

Our organization feels that the current bills before this House address most of those problems.

Mr. RICHARDSON. Okay. Let me just direct the question to the other two gentlemen. Let's assume we were to amend the Act. What of your expertise and initiative would you transport to Indian gaming that is not happening now? Give me some specifics, not the legal changes.

Mr. TABOR. I think that we would start by talking about the audit functions that would need to be accomplished. We would talk about investigative functions, the ability to look at the cash flow and something that was mentioned earlier, the background, that entire area of background information, very, very important.

I think the need of the State to look into these operations is on an escalating format when you look at exactly what the Indian operation might do. For example, if you have a commingled pool where the Indian Tribe is actually in a pool with other gambling operations in Florida, then some problem that occurs in that location could certainly create a problem at locations throughout Florida, and in that case the State's interests, the State's public policy would be great to try and regulate in that area.

Mr. HARE. Mr. Chairman, I would agree with Mr. Tabor that the audit function is a tremendously important function. As I understood the comments of Mr. Cummings earlier, that is one of the headaches for his organization in trying to gather national data regarding overall gaming figures to include tribal gaming.

I have with me, and I can leave with you for the record at your request, the State Auditor's report on horse racing statistics for calendar year 1992 in Oklahoma which contains that breakout that you referenced. This is a report that is available to the Racing Commission now, a summary of our race meetings and race tracks.

Mr. RICHARDSON. We will insert it in the record if you wish.
[The information follows:]

SA&I

Clifton H. Scott
Oklahoma State Auditor & Inspector

STATE OF OKLAHOMA

HORSE RACING STATISTICS

CALENDAR YEAR 1992

STATE OF OKLAHOMA

HORSE RACING STATISTICS

CALENDAR YEAR 1992

This publication is printed and issued by the State Auditor as authorized by 74 O.S. 1991, §212. Pursuant to 74 O.S. 1991, §3015, 40 copies have been prepared and distributed at a cost of $60.00. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

STATE OF OKLAHOMA

HORSE RACING STATISTICS

CALENDAR 1992

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STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR
OKLAHOMA CITY

CLIFTON H. SCOTT
State Auditor and Inspector

100 State Capitol
Oklahoma City, OK 73105-4896
405/521-3495

TO THE OKLAHOMA HORSE RACING COMMISSION
6501 North Broadway, Suite 180
Oklahoma City, Oklahoma 73116

This is a statistical report relative to all horse racing activities which occurred in the State of Oklahoma during the calendar year 1992.

There were six race meets held with a combined total of 367 race days. This report is the result of our monitoring and data accumulation from each race meet on a daily basis.

This is not to be considered an audit report in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements as a whole.

This is for information purposes only.

Clifton H. Scott

CLIFTON H. SCOTT
State Auditor and Inspector

June 1, 1993

DISTRIBUTION SUMMARY
ALL RACE MEETS
PRIOR YEAR COMPARISON

	1992	1991	increase (decrease)
Net Wagered	$210,222,721.00	$217,538,617.00	($7,315,896.00)
Deductions:			
Commissions			
Track	20,343,354.80	21,126,040.50	(782,685.70)
Purses	13,886,955.54	13,069,327.20	817,628.34
State of Oklahoma	5,569,628.44	7,352,576.17	(1,782,947.73)
Host Tracks (simulcasts)	829,293.65	769,708.49	59,585.16
Oklahoma Horse Racing Comm.			
B.F.D.S.A.	441,243.00	0.00	441,243.00
Breakage	1,424,109.20	1,550,928.56	(126,819.36)
Uncashed Tickets	609,207.85	683,013.20	(73,805.35)
Total Deductions	43,103,792.48	44,551,594.12	(1,447,801.64)
Net Paid to Public	$167,118,928.52	$172,987,022.88	($5,868,094.36)

NET WAGERED BY POOL
ALL RACE MEETS
PRIOR YEAR COMPARISON

	1992	1991	increase (decrease)
Win	$30,731,606.00	$35,322,489.00	($4,590,883.00)
Place	18,718,176.00	22,211,803.00	(3,493,627.00)
Show	24,129,418.00	28,165,903.00	(4,036,485.00)
Daily Double	12,853,643.00	14,247,381.00	(1,393,738.00)
Exacta	96,103,250.00	98,319,142.00	(2,215,892.00)
Quinella	8,615,204.00	8,793,242.00	(178,038.00)
Trifecta	9,071,524.00	0.00	9,071,524.00
Pick Six	9,700,656.00	10,126,610.00	(425,954.00)
National Pick Six	97,618.00	0.00	97,618.00
Pick Seven	201,626.00	352,047.00	(150,421.00)
Totals	210,222,721.00	$217,538,617.00	($7,315,696.00)

NET WAGERED BY BREED
ALL RACE MEETS
PRIOR YEAR COMPARISON

	1992	1991	increase (decrease)
Thoroughbred	$148,042,234.00	$154,326,682.00	($6,284,448.00)
Quarter Horse	45,259,488.00	47,150,028.00	(1,890,540.00)
Thoroughbred and Quarter Horse	310,320.00	431,890.00	(121,570.00)
Paint	960,916.00	901,537.00	59,379.00
Appaloosa	689,231.00	775,626.00	(86,395.00)
Paint and Appaloosa	4,396,366.00	4,136,063.00	260,303.00
Simulcast			
Thoroughbred	9,475,689.00	9,816,791.00	(341,102.00)
Quarter Horse	1,088,477.00	534,558.00	553,919.00
Totals	$210,222,721.00	$218,073,175.00	($7,850,454.00)

NUMBER OF RACES BY BREED
ALL RACE MEETS
PRIOR YEAR COMPARISON

	1992	1991	increase (decrease)
Thoroughbred	1,979	2,023	(44)
Quarter Horse	1,531	1,646	(115)
Thoroughbred and Quarter Horse	12	18	(6)
Paint	36	38	(2)
Appaloosa	26	50	(24)
Paint and Appaloosa	148	156	(8)
Simulcast			
Thoroughbred	322	123	199
Quarter Horse	87	10	77
Totals	4,141	4,064	77

OTHER STATISTICAL DATA
ALL RACE MEETS
PRIOR YEAR COMPARISON

	1992	1991	Increase (decrease)
Total Attendance	1,640,728	1,722,415	(81,687)
Average Daily Attendance			
Number of Race Days	367	368	(1)
Average Daily Handle			
Average Daily Wagered Per Capita			
Federal Income Tax Withheld	$1,709,968.75	$1,435,873.00	$274,095.75
State Income Tax Withheld	$342,171.00	$286,967.00	$55,204.00

DISTRIBUTION SUMMARY
ALL RACE MEETS
CALENDAR YEAR 1992

	Total	Remington Park	Blue Ribbon Downs	Fair Meadows	Will Rogers Downs
Net Wagered	$210,222,721.00	$161,098,703.00	$33,045,967.00	$16,078,051.00	$0.00
Deductions:					
Commissions					
Track	20,343,354.80	$15,173,221.45	3,044,813.13	2,125,320.22	0.00
Purses	13,886,955.54	$10,834,834.82	2,080,598.78	971,521.94	0.00
State of Oklahoma	5,569,628.44	$4,691,833.88	877,794.56	0.00	0.00
Host Tracks (simulcasts)	829,293.65	$462,652.42	366,641.23	0.00	0.00
Oklahoma Horse Racing Comm.					
B.D.F.S.A.	441,243.00	378,590.95	62,652.05	0.00	
Breakage	1,424,109.20	$1,063,412.11	235,182.95	125,514.14	0.00
Uncashed Tickets	609,207.85	$474,561.40	67,184.85	67,461.60	0.00
Total Deductions	43,103,792.48	33,079,107.03	6,734,867.55	3,289,817.90	0.00
Net Paid to Public	$167,118,928.52	$128,019,595.97	$26,311,099.45	$12,788,233.10	$0.00

NET WAGERED BY POOL
ALL RACE MEETS
CALENDAR YEAR 1992

	Total	Remington Park	Blue Ribbon Downs	Fair Meadows	Will Rogers Downs
Win	$30,731,606.00	$22,965,626.00	$5,178,433.00	$2,587,547.00	$0.00
Place	18,718,176.00	14,198,122.00	2,884,063.00	1,635,991.00	0.00
Show	24,129,418.00	19,119,832.00	2,867,292.00	2,142,294.00	0.00
Daily Double	12,853,643.00	10,038,791.00	2,035,817.00	779,035.00	0.00
Exacta	96,103,250.00	81,427,218.00	10,708,466.00	3,967,566.00	0.00
Quinella	8,615,204.00	0.00	5,659,978.00	2,955,226.00	0.00
Trifecta	7,232,104.00	4,407,824.00	2,824,280.00	0.00	
Pick Six	9,700,656.00	8,691,634.00	838,050.00	170,972.00	0.00
National Pick Six	97,618.00	91,232.00	6,386.00	0.00	
Pick Seven	201,626.00	158,424.00	43,202.00	0.00	0.00
Totals	208,383,301.00	$161,098,703.00	$33,045,967.00	$14,238,631.00	$0.00

NET WAGERED BY BREED
ALL RACE MEETS
CALENDAR YEAR 1992

	Total	Remington Park	Blue Ribbon Downs	Fair Meadows	Will Rogers Downs
Thoroughbred	148,042,234.00	$127,856,304.00	$12,373,200.00	$7,812,730.00	$0.00
Quarter Horse	45,259,488.00	24,757,122.00	13,985,011.00	$6,517,355.00	0.00
Thoroughbred and Quarter Horse	310,320.00	78,543.00	231,777.00	$0.00	0.00
Paint	960,916.00	539,020.00	421,896.00	$0.00	0.00
Appaloosa	689,231.00	301,952.00	387,279.00	$0.00	0.00
Paint and Appaloosa	4,396,366.00	1,640,891.00	1,007,509.00	$1,747,966.00	0.00
Simulcast					
Thoroughbred	9,475,689.00	5,677,078.00	3,798,611.00	$0.00	0.00
Quarter Horse	1,088,477.00	247,793.00	840,684.00	$0.00	0.00
Totals	$210,222,721.00	$161,098,703.00	$33,045,967.00	$16,078,051.00	$0.00

NUMBER OF RACES BY BREED
ALL RACE MEETS
CALENDAR YEAR 1992

	Total	Remington Park	Blue Ribbon Downs	Fair Meadows	Will Rogers Downs
Thoroughbred	1,979	1,194	639	146	0
Quarter Horse	1,531	412	951	168	0
Thoroughbred and Quarter Horse	12	1	11	0	0
Paint	36	9	27	0	0
Appaloosa	26	3	23	0	0
Paint and Appaloosa	148	28	76	44	0
Simulcast					
Thoroughbred	322	43	279	0	0
Quarter Horse	87	3	84	0	0
Totals	4,141	1,693	2,090	358	0

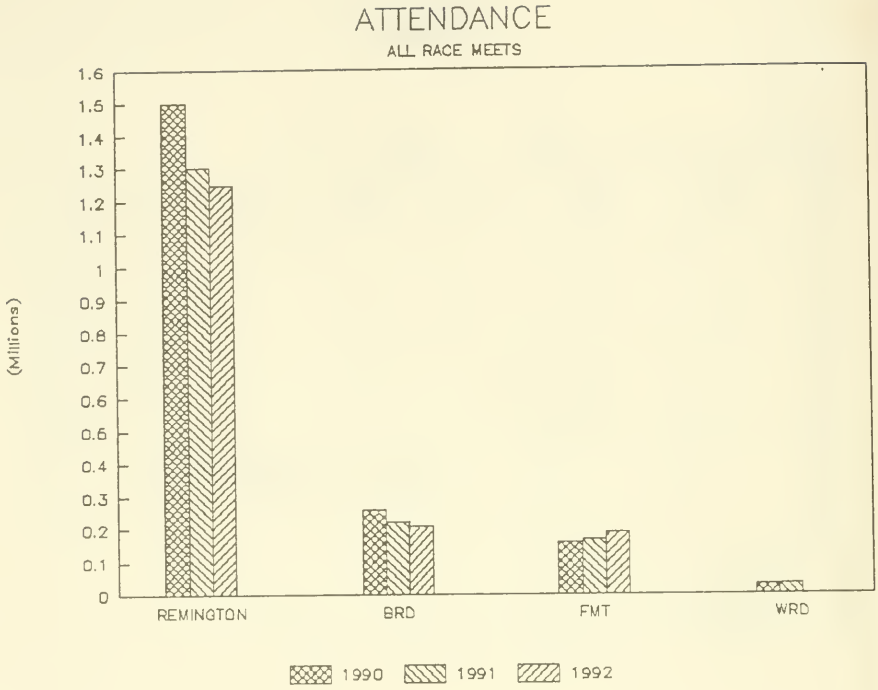
OTHER STATISTICAL DATA
ALL RACE MEETS
CALENDAR YEAR 1992

	Total	Remington Park	Blue Ribbon Downs	Fair Meadows	Will Rogers Downs
Total Attendance	1,640,728	1,245,301	206,620	188,807	0
Average Daily Attendance		7,832	1,148	6,743	0
Number of Race Days	367	159	180	28	0
Average Daily Handle		$1,013,199.39	$183,589.00	$574,216.11	$0.00
Average Daily Wagered Per Capita		$129.37	$159.94	$85.16	$0.00
Federal Income Tax Withheld	$1,709,968.75	$1,441,960.75	$192,370.00	$75,638.00	$0.00
State Income Tax Withheld	$342,171.00	$288,807.00	$38,332.00	$15,032.00	$0.00

REMINGTON PARK
1992 COMMON POOLING
BY TRACK

COMMON POOL DAYS	TOTAL NET WAGERED	TOTAL NET PAYOUT	TRACK	TRACK WAGER	TRACK PAYOUT	% OF NET WAGER	% OF NET PAYOUT
20	$21,226,569.00	$16,848,508.14	AKS	$1,645,383.00	$1,350,691.80	7.75%	8.02%
7	5,953,063.00	4,716,225.30	BRD	304,871.00	249,930.75	5.12%	5.30%
5	5,079,048.00	4,071,077.49	LAD	420,476.00	357,512.20	8.28%	8.78%
6	5,144,443.00	4,083,268.99	THD	239,891.00	180,588.80	4.66%	4.42%
25	26,214,867.00	20,831,204.34	WDS	664,069.00	$543,177.45	2.53%	2.61%
				$3,274,690.00	$2,681,901.00		

AKS - AKSARBEN
BRD - BLUE RIBBON
LAD - LOUISIANA DOWNS
THO - THISTLEDOWNS
WDS - WOODLANDS


ATTENDANCE
ALL RACE MEETS
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REMINGTON
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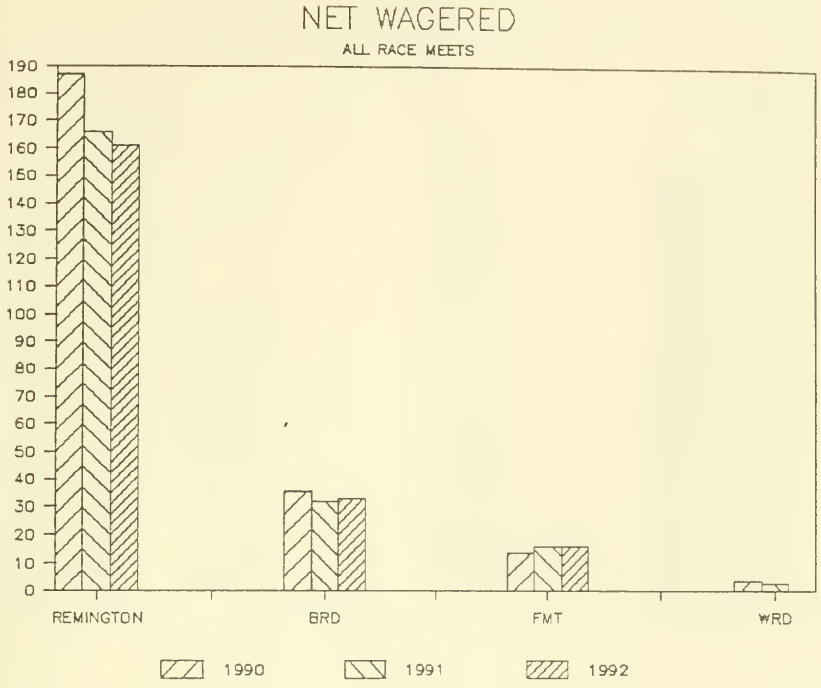
1991
1992


NET WAGERED
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190
180
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REMINGTON
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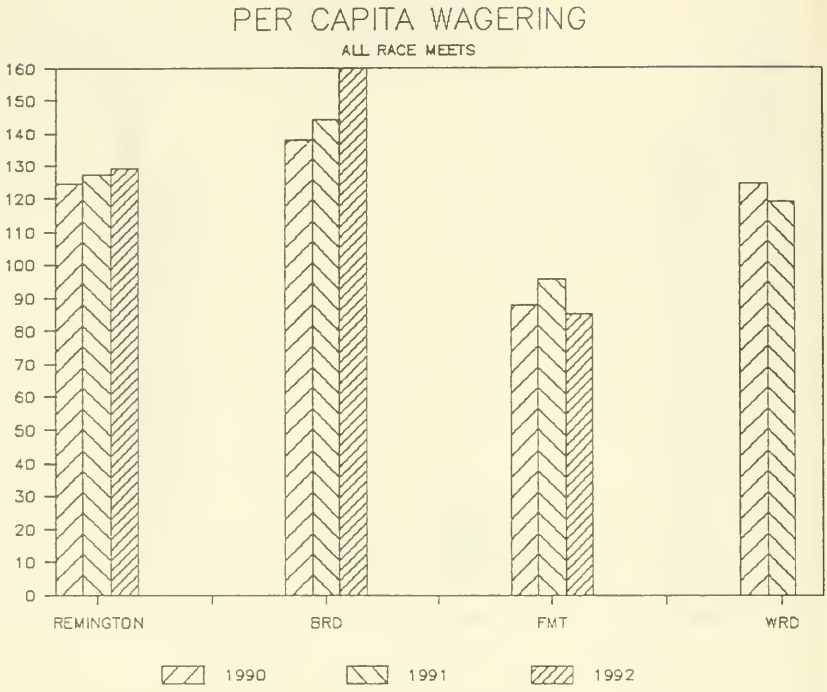
1991
1992


PER CAPITA WAGERING
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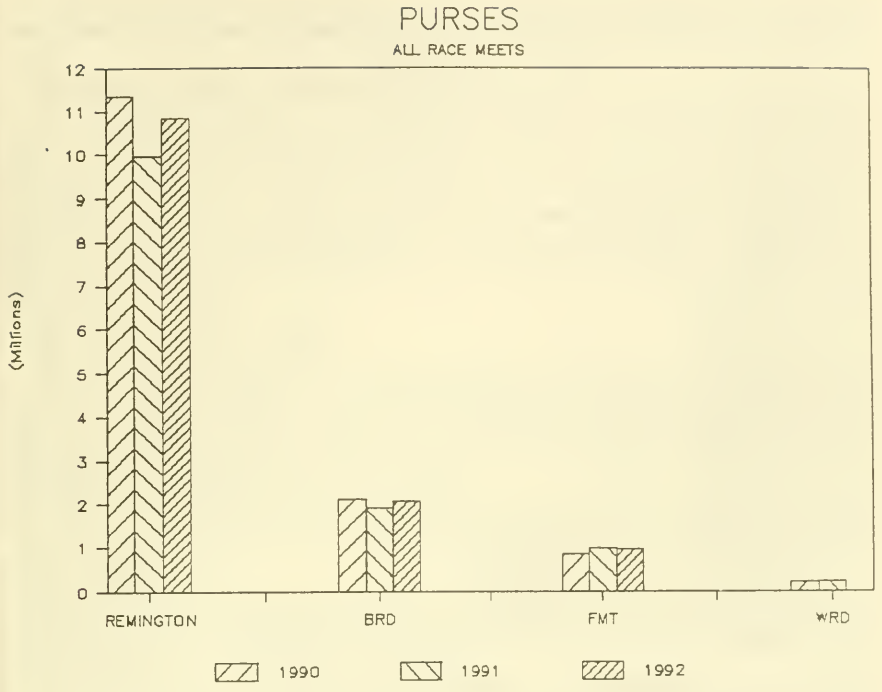
PURSES
ALL RACE MEETS
(Millions)
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REMINGTON
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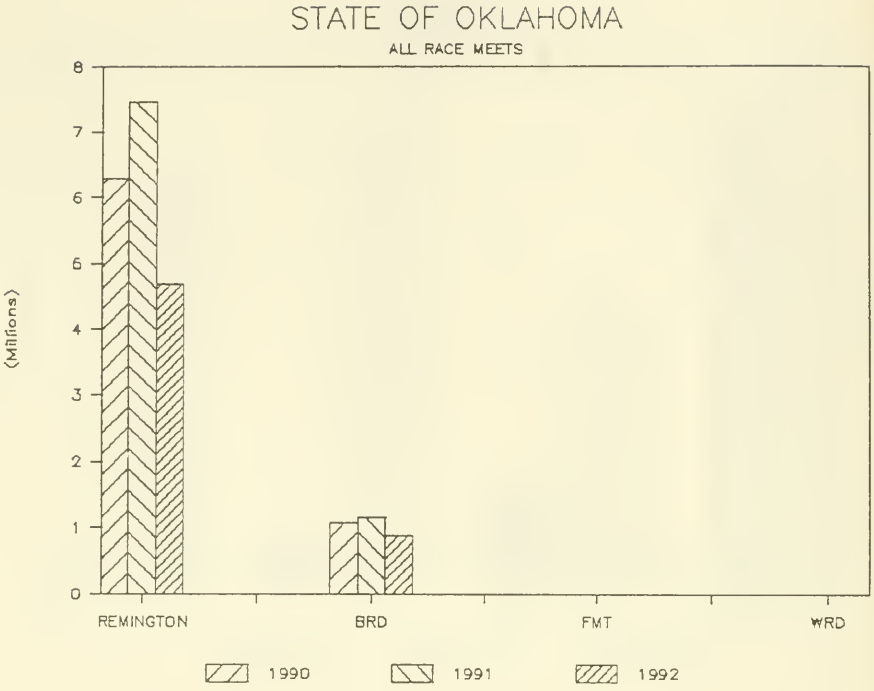
STATE OF OKLAHOMA
ALL RACE MEETS
(Millions)
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REMINGTON
BRD
FMT
WRD
1990
1991
1992

Mr. HARE. But the Indian gaming compacts that we have seen may not otherwise be available to the State or regulatory authorities.

Mr. RICHARDSON. The gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Chamblin, you have given a summary in your testimony starting on page 3 of what you think all the bills before the Congress would accomplish, and then Mr. Tabor has indicated, I think, a similar attitude with respect to questions of whether or not the Tribes can introduce gambling otherwise forbidden in a State. Isn't that perhaps—I won't say the key contention—but it is fundamental to resolving all the other issues. Would you all agree on that?

Mr. TABOR. Yes.

Mr. HARE. Yes, I would.

Mr. ABERCROMBIE. Let's take casino gambling as a case in point, or the example used by you, Mr. Tabor, of could the Native Americans in Florida begin their own lottery. So it is a double-edged thing, that which is already legal in a State. Can that be, say, expanded or exacerbated in some way?

That is one question. And the other question is whether or not you can introduce a form of gambling otherwise forbidden. Is that a fair summary?

Mr. TABOR. I think so. I think the answer to your question is that we would oppose—and that is really central to this point—we would oppose an Indian Tribe being able to conduct casino gambling because the State has a lottery.

A lottery and casino gambling are vastly different. In Florida, the lottery is State-run. Every dollar that is wagered is through one central computer system. The audit trails are excellent. The record is excellent.

Mr. ABERCROMBIE. Excuse me. I understand that, and I am not trying to cut you off, but one of the things that came to my mind was I thought all of you were arguing that if the State allows a particular form of gambling, then the Tribes should be able to do it.

Mr. TABOR. We agree that if the State allows a particular form, the Tribe should be allowed to do it.

Mr. ABERCROMBIE. Provided that they conform to the same legal requirements as associated with that form of gambling that is allowed under State law?

Mr. TABOR. That would be preferable, yes.

Mr. ABERCROMBIE. Then why couldn't the Tribes form their own lottery?

Mr. TABOR. Tribes can form their own lottery in Florida.

Mr. ABERCROMBIE. Well, if that is the case, then, as long as the money went to education, wouldn't it be okay? Because your lottery requires the money to go to education, right?

Mr. TABOR. Yes, sir.

Mr. ABERCROMBIE. Is there something that makes you think they would not necessarily conform to that requirement?

Mr. TABOR. The attitude across the country of Tribes is not to pay tax on those, on gaming, Indian gaming.

Mr. ABERCROMBIE. Would it be acceptable to all of you if this law was amended in such a way as to say the Tribes can engage in

anything that the State allows for engagement with respect to gambling, and if they follow the same regulations as everybody else, then they can do it, too?

Mr. TABOR. Yes, sir. I would agree.

Mr. ABERCROMBIE. Is that a fair statement?

Mr. CHAMBLIN. If we are talking about State regulations, yes, state regulations as opposed to separate regulations.

Mr. ABERCROMBIE. The reason I am bringing this up, Mr. Chamblin, if I can switch to you, is that one of your points in the testimony made very clear is there is a question of employment here, whether employment might be lost. So if the Tribes were engaged in gambling otherwise permitted by the States, there would be employment there, right?

Mr. CHAMBLIN. Certainly.

Mr. ABERCROMBIE. Now the problem here then comes with a taxability question, right?

Mr. CHAMBLIN. That is a major question.

Mr. ABERCROMBIE. Well, I think part of that comes down to that is tough, as far as you are concerned, because where the gambling takes place, the people who are doing the gambling don't necessarily care what the tax take is, so I think you have got a little bit of dilemma here.

If you are talking about employment, there is employment on the Indian lands. Let's assume for the moment, for conversation's sake, that this issue has been settled that they can't go to a shopping mall and buy a piece of land in the shopping mall and turn it into a casino or something like that. Let's suppose that you succeed with that in the amendments to the bill. Your State may not be deriving revenue in terms of taxation, but the employment is there, and there is a churn—I think the phrase is churn—is taking place of money, is it not?

Mr. CHAMBLIN. The money is there on the Indian Reservation or with the promoters or wherever that money goes. The money is not necessarily benefiting people within the State.

Mr. ABERCROMBIE. Well, it doesn't necessarily do that now.

Mr. CHAMBLIN. And the roads that lead to the Reservations are paid for by State taxpayers, as are many other facilities that are used and enjoyed by citizens of the State that are affected in this whole situation.

Mr. ABERCROMBIE. Yes, but if the gambling—this is a really important point for me—if the gambling is the same as it is anywhere else, and they conform precisely to the regulations within the State, what difference does it make because somebody is not going to go to an Indian Reservation then or tribal land to gamble because there is some advantage to the person to go to that particular tribal land? It may be just a matter of convenience.

It seems to me all you are doing is having more of the same take place that might not otherwise take place, and that is going to be overall economically. If a State allows it in the first place, it is just another economic venue.

Mr. CHAMBLIN. Well, then you would succeed——

Mr. ABERCROMBIE. The only problem is the taxation question as far as the State is concerned. But as far as the consumer of the product is concerned there is no difference.

Mr. CHAMBLIN. Well, it is a big difference to the investors in the racing facilities in those States because many of those will be out of business because they won't be able to compete. And there already are examples out there in Minnesota and Wisconsin of that happening and soon to be more examples. They cannot compete.

Mr. ABERCROMBIE. Because of the taxation question?

Mr. CHAMBLIN. Mainly, yes.

One of the big areas is taxation, where they are paying taxes to the State, and the Indians are not.

Mr. ABERCROMBIE. It seems to me almost the only argument is that one pays a tax and one doesn't, so one is more profitable and one is less profitable. But in terms of whether or not people are going to go there, it is probably more a matter of the logistics of distance than anything else, right, as far as the consumer is concerned? The consumer doesn't gain any benefit one way or the other by going to an Indian establishment as opposed to the State of Florida establishment or a State of Kentucky or State of Oklahoma, is that correct?

Mr. CHAMBLIN. I think a consumer who wants to go to the horse races will not be able to do that on Indian lands because they will have casinos only because they are much more profitable than horse tracks——

Mr. ABERCROMBIE. No. I predicated my comments on them having only that which is allowed by the States, only such gambling as is allowed by the States. Isn't that what you are recommending?

Mr. CHAMBLIN. Yes.

Mr. ABERCROMBIE. So if Florida, for example, doesn't have any——

Mr. CHAMBLIN. But you said that the industry would not be hurt if everything else were equal, if they were allowed to have what the State permitted. And I would respectfully point out that the basic problem is that the Indian Reservations will not have horse tracks. They will have casinos, and race tracks throughout the States will be impacted negatively as a result.

Mr. ABERCROMBIE. I won't debate that further other than to say that my view is that if casinos are otherwise forbidden in the State and the Act is amended to say you cannot have any gambling activity that is not permitted in the State, then things would be equal other than the taxation issue, and that is a separate problem.

Mr. HARE. Mr. Abercrombie, if I might interject on your question. I don't believe they would be equal because absent the tax, it puts the Tribe in a situation where there is more revenue to them to pay the horsemen's purses, for example, or to lower the takeout that Mr. Chamblin addressed earlier, which is in a State, let's say, established at 18 percent. They are in a position to lower that which, by the nature of lowering that, lowering that would make the gaming activity at that facility more attractive to the consumer, to the racing fan because the payback to the public would be greater in a circumstance at such a gaming facility absent the tax.

Mr. ABERCROMBIE. Okay. Obviously, this needs to be pursued but not now.

Mr. RICHARDSON. The gentleman was asking some excellent questions, and I would yield him additional time.

Mr. ABERCROMBIE. Wouldn't that be true of any nonprofit? Maybe after today's hearing you are going to have Catholic charities come in and decide to get into it because they are a nonprofit group that isn't taxed. Why couldn't they come in and get a license and take up horse racing or whatever and do exactly what you are talking about?

Mr. HARE. Well, if they did, they wouldn't have it on a charitable basis in Oklahoma. They would have to compete on the same basis with the same tax structure as our existing licensees do.

Mr. CHAMBLIN. We already have a number of nonprofit race tracks in the country, and they all pay the same State taxes as the for-profit tracks do.

Mr. ABERCROMBIE. Okay. I won't pursue it further.

It seems to me, though, that zeros in where some of our difficulty is here with respect to amending. If you had some agreement with respect to taxation, then, or a fee, maybe you wouldn't have to tax—maybe a fee could be attached that wouldn't be construed as a tax. And maybe we can pursue that, Mr. Chairman.

Thank you for your indulgence.

Mr. RICHARDSON. The Chair recognizes the gentlelady from Oregon for a question.

Let me say that I want to apologize to the last panel. We are unfortunately running into a bit of a time squeeze. The Chair recognizes the gentlelady.

Ms. FURSE. I guess my question would be that, as sovereign nations, would not the Tribes have the right to apply a tax also, say a tax for education, making them then providing a tax to a tribal enterprise?

Mr. TABOR. I think the answer would be yes, they certainly could impose a tax and for whatever purpose.

Ms. FURSE. Thank you.

Mr. RICHARDSON. Let me thank the three of you for appearing today. We know that logistically it was difficult for some of you. We appreciate it, and we look forward to continuing working with you. I do ask you not to forget to submit those items for the record that we discussed earlier.

PANEL CONSISTING OF JOHN C. DILL, COUNSEL, AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION; JAMES J. HICKEY, JR., PRESIDENT, AMERICAN HORSE COUNCIL, INC.; JOSEPH A. DeFRANCIS, PRESIDENT, MARYLAND JOCKEY CLUB, AND CHAIRMAN, LEGISLATIVE COMMITTEE, THOROUGHBRED RACING ASSOCIATION; MELVIN R. BOWMAN, PRESIDENT, NATIONAL HORSEMAN'S BENEVOLENT AND PROTECTIVE ASSOCIATION; WILLIAM J. BISSETT, PRESIDENT, SPORTSYSTEMS INC., ON BEHALF OF THE AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION; AND HON. JAMES W. JONES, MAYOR, CITY OF POLSON, MT

Mr. RICHARDSON. Our next panel consists of William J. Bissett, President, Sportsystem Incorporated; John C. Dill, Counsel, American Greyhound Track Operators Association; James Jay Hickey, Jr., President, American Horse Council; Mr. Joseph A. DeFrancis, President and Chief Executive Officer of the Maryland Jockey

Club; Mr. Melvyn R. Bowman, President of the National Horseman's Benevolent and Protective Association.

Welcome to the subcommittee. We appreciate your being here. The Chair wishes to thank the gentleman from Hawaii who has an airplane to catch, and I am wondering how the gentleman is going to return for votes on Monday. I really thank the gentleman for his courtesy.

Gentlemen, you know we are asking you to summarize in five minutes or less.

Mr. Dill, please proceed.

STATEMENT OF JOHN C. DILL, ESQ.

Mr. DILL. Thank you, Mr. Chairman.

I am John C. Dill, Washington Counsel for the American Greyhound Track Operators Association, or AGTOA. AGTOA appreciates the opportunity to appear before the subcommittee today to discuss the issue of gaming on Indian lands.

AGTOA has been an active participant in this debate since 1985. We strongly support a level economic playing field for all gaming. In our view, the 1988 Indian Gaming Regulatory Act, or IGRA, needs to be amended to address all of the problems that have surfaced since 1988.

AGTOA is not surprised that the Act has not worked as promised. At the time it was drafted, primarily by the other body, we identified several issues of concern. Those issues which are detailed in our written testimony continue to be the source of litigation and strife.

By and large, these problems have worked to the benefit of the Tribes. It is for this reason that a majority of the Tribes insists that the Act is working well. It is for them; but it is not working as intended, Mr. Chairman, and we believe it is the responsibility of this Congress to address those problems.

As we speak, there are at least 50 legal opinions from various Federal courts—either lower courts or Courts of Appeal—concerning the 1988 Act. There are probably at least another 50 or more cases pending in preliminary stages before those courts.

The disputes involve land into trust issues, which was a question in Oregon; the definition of good faith; the question of whether one form of Class III gaming in a State begets all forms of Class III gaming on the part of Indians; whether or not charitable gaming is going to result in full-blown commercial casinos on Indian lands; whether or not the 10th and 11th Amendments bar suits against the States, et cetera. This explosion of costly litigation less than 5 years after the passage of the 1988 Act is the best evidence that amendments are necessary.

Some Tribes will tell you that Congress has no ability to enact laws that affect their gaming rights. They will tell you they have some sort of constitutional position that allows them to do what they wish. Other Tribes have cited the 1987 *Cabazon* case from the Supreme Court as setting limits on what Congress can do to control gaming on Indian lands.

The case did nothing of the sort. The case basically said that unless and until Congress acts in this area, the *Cabazon* theory is to

apply. The Supreme Court clearly stated that Congress could ban any and all Indian gaming if it chose to do so.

Congress did not do that in 1988. Instead you created at least on paper a balanced system that would regulate Indian gaming, protect the Tribes and the gaming public from unscrupulous persons, and achieve a fair balancing of competitive economic interests. The Act may or may not have worked on the first two things, but it certainly has fallen far short of achieving a fair balancing of competitive economic interest.

A word about that competition. The issue is not about Indian gaming. If only the Indians were gambling among themselves, the States and our industry would not care much what happens. The fact of the matter is this is an issue about gaming on Indian lands. The Tribes are going after the exact same customer base that we are targeting.

AGTOA is not opposed to fair competition from Indian Tribes or anyone else, but we are strongly opposed to the sort of competition that this Act has engendered. That competition in effect is a form of reverse discrimination against non–Indian gaming enterprises. Because of imperfect drafting of the Act, a campaign of disinformation by the Tribes and a series of court cases which are just flat wrong, Indians are now allowed to run games within States that are illegal. No one else is allowed to do so.

If our operators were to try to do so, they would be arrested. This is not a level playing field, this is not fair competition and we submit this was not what was intended by the 1988 Act.

Now, AGTOA is not here to defend how Native Americans have been treated in this society. Without question, Mr. Chairman, the economic condition of Tribes and many Indians is absolutely shameful. We are not here to argue that gaming on Indian lands has been of no benefit to the Tribes. It probably has.

We are here to ask that Congress return a measure of balance to the relationship between the States, the Tribes and our industry. The sins of our collective past should not be paid for by the non–Indian gaming industry. The Hoagland–Machtley–Torricelli and Solomon bills all address the real problems with the Act.

We strongly endorse these efforts and we encourage the committee to act immediately on them.

Thank you.

Mr. RICHARDSON. Thank you, Mr. Dill.

[Prepared statement of Mr. Dill follows:]

TESTIMONY OF THE

AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

HOUSE NATURAL RESOURCES COMMITTEE

JUNE 25, 1993

Mr. Chairman, Members of the Subcommittee, my name is John C. Dill. I am a partner in the Washington D.C. law firm of Dickstein, Shapiro & Morin. I am pleased to appear before you today as Washington Counsel for the American Greyhound Track Operators Association (AGTOA) to discuss the issue of gaming on Indian lands.

AGTOA is a non-profit corporation which was formed in April, 1946. Its membership consists of the owners and operators of 46 Greyhound tracks located in 17 states throughout the United States. Membership is open to all lawfully licensed greyhound tracks whether they be owned by individuals, partnerships or corporations.

Greyhound racing is the sixth largest spectator sport in America. In 1992, the attendance at AGTOA's member tracks was 28,690,577. Approximately $3.2 billion was wagered at these tracks, and out of that pari-mutuel handle, State and county governments received over $207 million.

Since 1985, AGTOA has been deeply involved in the public policy debate surrounding gaming on Indian lands. We have an economic and political stake in gaming on Indian lands for one very simple reason: the tribal sponsors of such games seek the exact same customers we do -- the non-Indian gaming customer. This simple fact is often lost in the shuffle of press reports and media attention on "Indian gaming," a misnomer which leaves the mistaken impression that the issue is about gambling among Indian tribal members. Instead, the issue concerns a balancing act over (1) the rights of States to control the actions of its own citizens while within its borders, (2) the duty of the federal government to insure that the tribes are permitted to engage in the same activities as others within the State, and (3) the responsibility of the federal and state governments to insure that fair and equal competition is fostered. This complicated balancing act between the States, the tribes and non-Indian gaming industry is not often found in most public policy issues involving Native Americans.

AGTOA opposed the original 1985 legislation introduced by then-Chairman Morris Udall (D-AZ) and by Senator Dennis DeConcini (D-AZ) that would have created a federal "Indian gaming czar" approach to regulating gaming on Indian lands. The concept behind the Udall-DeConcini bills was that tribes would be allowed to engage in any form of gaming they wanted, with regulation provided by the federal government. AGTOA was concerned that such an approach would be unworkable and would lack the financial resources needed to produce meaningful regulation of games run on Indian lands. The State of Nevada, for instance, spends over $20 million to regulate casinos within the State, all of which operate under the same rules and regulations. It seemed highly unlikely to AGTOA that the federal government could spend the multi-millions of dollars necessary to regulate far-flung casinos

on Indian lands, all operating under different rules and regulations.

AGTOA worked closely with then-Congressman Tony Coelho (D-CA) and with Senator Slade Gorton (R-WA) on legislation that would realistically address gaming on Indian lands. In 1986, the House of Representatives passed legislation that placed a five year moratorium on high-stakes Class III gaming on Indian lands. That same year, the Senate Indian Affairs Committee, after a major fight, narrowly reported out legislation that would allow Class III gaming. Behind the scenes discussions, however, indicated that the full Senate would instead pass legislation to prevent all Class III gaming on Indian lands unless such activity came under State control. Unfortunately, that Congress adjourned before this legislation was enacted.

When the 100th Congress convened in early 1987, key representatives of the Indian tribes and the non-Indian gaming industry were working together on legislation to provide certainty for our industry and the tribes alike. These discussions were moving toward a consensus when the Cabazon decision was handed down by the United States Supreme Court.

While the Cabazon decision may have created a political problem for the negotiation process, it did not create a legal problem. In fact, there has never been a Constitutional obstacle to placing limits on gaming on Indian lands. The Cabazon case stood clearly for the proposition that Congress could ban all Indian gaming if it chose to do so. The Court stated that "surely the federal government has authority to forbid Indian gaming enterprises." 107 S.Ct. 1083, 1094. Even though the Cabazon case did not legally prevent Congress from acting to control gaming on Indian lands, politically, the tribes no longer felt they had a reason to negotiate a solution, and when they finally did return to the negotiating table, the tribes were much more hard-line in their approach to the issue.

Ultimately, the concept of a tribal-State "compact" evolved and became the basis for the 1988 Indian Gaming Regulatory Act. The "compact" approach provided flexibility in determining which gaming activities would be operated on Indian lands. Nevertheless, the heart of the compact approach was agreement, not unilateral action or coercion.

At the time the Act was negotiated, AGTOA expressed several concerns about the coverage and specificity of the law. Our concerns were rejected as insignificant and our proposed solutions were viewed as unnecessary. Now, some four and one-half years after the passage of the Act, it is clear that these problems, and a few unanticipated ones, must be addressed if the Act is to work as intended.

Unfortunately, this Congress must address these problems against the backdrop of resistance from the tribes who have generally benefited from the problems either implicit in, or created by, the Act. A great deal of "revisionist" history is being offered to persuade you that tribes have an absolute Constitutional right to gamble, or that the Indian Gaming Regulatory Act is really named the Indian Gaming Economic Development Act, or that the States must allow full blown commercial casino gaming on Indian lands if they allow any form of gaming within their borders.

Fortunately, the Committee does not have to revisit past history to determine what was intended in 1988. Instead, the current reality of IGRA amply demonstrates the need for correction. The Act has resulted in unnecessary turmoil, and has provided lawyers yet another "relief act." Change is necessary to restore balance between the States, tribes and the non-Indian gaming industry.

Legislative approaches introduced by Congressman Peter Hoagland (D-NE), Ron Matchley (R-RI), Robert Torricelli (D-NJ) and Gerald Solomon (R-NY) address most of the fundamental problems in the Indian Gaming Regulatory Act. Of these four bills, the Hoagland and Torricelli bills are the most comprehensive. AGTOA strongly endorses the efforts to amend IGRA, and urges the Subcommittee to move expeditiously to consideration of amendments to the Act.

In the view of AGTOA, the fundamental problems of the Act fall into the following four categories: (1) the acquisition of new lands for gaming purposes; (2) the burden on States to disprove allegations of "bad faith" negotiating with tribes; (3) the interpretation of "gaming activities" under IGRA; and (4) the need to distinguish between commercial gaming activities and those of a charitable nature. Each of these areas is discussed in more detail below.

1. Acquisition of New Lands for Gaming Purposes

The 1988 Act established several exceptions to the general prohibition against gaming on after acquired lands. Section 20(b) is a "catch-all" exception which authorized the Secretary to take land into trust provided that it would be in the best interests of the tribe, and would not be detrimental to the surrounding community; but "only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."

Like so many things in the Act, these simple, straightforward words have been the subject of unnecessary debate, confusion, and controversy. For over two years, the Department of Interior left the States of Iowa and Oregon in legal limbo as it considered applications by tribes to acquire

new lands in those States. In Iowa, the land which was targeted for trust status was adjacent to one of AGTOA's tracks. Moreover, the acquiring tribe was in Nebraska, and wanted to take land into trust in Iowa so as to maximize their economic penetration of the Council Bluffs-Omaha market. In Oregon, the tribe wanted to take land into trust in downtown Salem.

In both instances, the Governors of the States announced their early opposition to such land transfers. Still, the Bureau of Indian Affairs and the Department of Interior proceeded ahead without pause, processing the applications without providing any rules, regulations or timetable to the State. During this time, Iowa and Oregon were subjected to a blizzard of reports, innuendo and predictions about the pending approval. Finally, the regional BIA offices gave each Governor just ten days to answer detailed questions concerning the environmental, land use, infrastructure, community and social impacts of the proposed casinos. Both Governor Brandstad and Governor Ray protested this time frame and reaffirmed their long-standing opposition, but the Secretary decided to approve the trust application in Oregon. Oregon sued the Department. On December 21, 1992, the Department wrote the Oregon Siletz tribe and informed them that the Department's Solicitor agreed that the Governor did, indeed -- as Section 20 clearly stated -- have the power to disapprove the application for new lands. Now the tribe has sued in Federal Court. AGTOA was pleased to learn earlier this year that both Chairman Inouye and Senator McCain apparently agreed with the Solicitor's view, but it is unfortunate that the Senators' position was not communicated to the Department two years earlier when it might may have served to encourage a more rapid decision by the Department.

These episodes are indicative of the sort of problems engendered by aggressive promotion of gaming by tribes and their financial backers. This two-year controversy was wasteful, unnecessary and engendered total confusion until the very end.

In AGTOA's view, the tribes and their financial backers must be prevented from using Section 20 to "poach" attractive parcels of land for gaming purposes. The Torricelli bill best accomplishes this goal by repealing new land transfers for gaming purposes unless the lands are within the tribe's last recognized reservation.

2. <u>The Burden on States to Disprove Bad Faith Negotiating with the Tribes</u>

Under IGRA, if a State is found to be acting in bad faith, a compact would very likely be imposed upon the State. At the time the 1988 Act was drafted, AGTOA was concerned that the burden of proof test for "bad faith" negotiating was wrongly placed on the States. The clearest analogy to the negotiations between the States and the tribes is federal labor law. In those

instances of labor bargaining, the party alleging "bad faith" maintains the burden to prove such an allegation. By way of contrast, in IGRA, the State has the burden of proving it is not acting in "bad faith" once the tribe shows that a tribal-State compact was not entered into within the requisite time period in the Act.

Not surprisingly, this standard, coupled with misinterpretation of the 1988 Act by some courts, has resulted in many States being held in bad faith for merely insisting that their gaming laws be upheld. The tribes, in contrast, are free to take hard-line positions, such as demanding full blown commercial casino gaming on their lands, often based on the most flimsy of legal arguments.

The balance Congress thought it was imposing in passing the 1988 act must be restored. The Hoagland and Solomon bills transfer the burden of proof back to the tribe. They further clarify that it will not be evidence of bad faith if a State insists that gaming on Indian lands be conducted on the same basis as gaming activities conducted by non-Indians under the terms of the relevant State law. The Torricelli bill transfers the right to sue States from the tribes to the U.S. Government, transferring the burden of proof to the United States. AGTOA endorses either approach for solving this problem.

3. The Interpretation of "Gaming Activities" Under IGRA

The 1988 Act did not intend to create a "generic" test for allowing Class III gaming on Indian lands. The Act intended that tribes be allowed to enter into compact negotiations for games otherwise lawfully played within a State. This principal is clear when one examines the theory behind the tribal-State compact. Unlike Class II gaming on Indian lands which follows the Cabazon theory of determining whether State law was criminal-prohibitory or civil-regulatory, the structure of the 1988 Act for Class III gaming was different. Whereas the Act refers to "Class II gaming" in Section 11(b), the Act discusses "Class III gaming activities" in Section 11(d). The addition of the term "gaming activities" indicates the intent of Congress that different forms of Class III gaming are not to be considered a broad category of gaming like Class II, but rather as a number of distinct games, some which may be permissible while others may not. Therefore, Class III gaming activities are lawful on Indian lands only if located in a State which permits such specific activities.

Congress established the tribal-State compacting process in order to utilize State expertise in regulating Class III gaming. The Report of the Senate Select Committee on Indian Affairs, which drafted S.555, makes that purpose abundantly clear when it states: "...the Committee notes that there is no adequate Federal regulatory system in place for Class III gaming, nor do

the tribes have such systems for the regulation of Class III gaming currently in place. Thus a logical choice is to make use of existing State regulatory systems,...." Clearly, if a State does not allow a particular type of Class III gaming, it would have no expertise and no regulatory system in place to control that form of gaming.

Senator John McCain (R-AZ), one of the authors of the Indian Gaming Regulatory Act, addressed the issue during floor debate when he stated "....we must insure that the Indians are given a level playing field in order to install gaming operations that are the same (emphasis added) as the States in which they reside...." (CONG. REC., September 15, 1988, S 12653). It is ironic that one of the chief Congressional sponsors of this legislation was concerned that tribes be given the same opportunities as the non-Indian gaming industry. Now, of course, it is the non-Indian gaming industry that is in the position of being denied games that are available to the tribes.

Despite the clear intent of the 1988 Act, despite the fact that the Act did not intend to apply any sort of "Cabazon" test for Class III gaming, and despite the fact that no other tests, such as whether a State had a "pervasive scheme" of gaming, were to be used for determining what form of Class III gaming is allowed to tribes within a State, some courts and commentators continue to confuse the issue. These individuals conclude that if a State allows one form of high-stakes Class III gaming, then it must allow Indians to play all forms of such games. This confusion is exacerbated by tribes who argue that they should automatically be allowed to play any and all games.

All four bills endorsed by AGTOA and pending before the Subcommittee address this problem by limiting Class III gaming to those specific games and methods of play expressly authorized by the laws of the State. It is our understanding that Senator Inouye and McCain likewise agree that Class III gaming is not to be considered generic in nature.

4. The Distinction between Commercial Gaming and Charitable Gaming

The charitable gaming issue is perhaps the most vexing question facing Congress. It is also the most important issue that must be addressed if we are to cure the problems of the Act. The problem is in part due to the structure of the Act and in part due to the experience of the past few years in implementing the Act. In 1988, no one intended that the mere existence of charitable "casino nights" be used to automatically bootstrap full blown Indian-run commercial casinos. Unfortunately, due to the missteps of some States -- notably Connecticut -- and due to the aggressive promotion of misinformation by the tribes, a large number of courts and commentators now believe that if a State allows any form of charitable casino games, the Indians must be

allowed to put in place full blown casinos. Such a view does not comport with the intent of the 1988 Act; nevertheless, Congress must address the issue in order to bring IGRA back to the intended position.

State charitable gaming laws are probably as varied as are the fifty States. Some States may severely limit such games; others may have a more regular form of charitable gaming. In virtually all cases, however, there are attributes of charitable gaming which can and should distinguish it from commercial gaming.

In commercial gaming, both the State and the for-profit promoter of the game usually benefit -- the State through tax revenues and the promoter through retention of profits. The promoter's profits go to the owners or shareholders of the facility.

In charitable gaming, there is no for-profit promoter, no owner of the facility, no shareholders. Instead, there is a charity, usually organized under federal and State tax laws, which obtains funds for charitable work. The State usually does not tax such activities. Moreover, the State may limit such charitable gaming so that the beneficiaries are on a rotating basis, i.e., no one charity conducts gaming 365 days a year.

This latter point is often missed, even by Congressional policy makers, who have said that if a State allows only a "few" nights of charitable gaming, that should not trigger commercial Indian casinos, but that if such gaming occurs "a lot", then tribes should be permitted commercial casinos.

AGTOA has no idea how such a nebulous standard could be applied. Regardless, it misses the whole point of charitable gaming -- no matter how often it might occur, and no matter which particular charity may benefit, there is a fundamental difference between charitable gaming and commercial gaming. One should not bootstrap the other.

Faced with this issue, Indian tribes often claim they are a "charity". This is a disingenuous argument that conveniently ignores tribal views that they are "sovereign governments." In fact, in the gaming area, tribes wear both a government "hat" as well as a promoter "hat." In and of itself, this dual role causes serious concern from a conflict-of-interest point of view, but at the bottom line, AGTOA submits that while Indian tribes may be able to have it two ways, they cannot have it three ways. They cannot be a "government" when it suits one purpose, a for-profit "gaming promoter" when it suits another purpose, and a "charity" when it suits yet another purpose.

The charitable gaming issue can also be easily analyzed from a "common sense" point of view. While charitable gaming has been around for years, the average person has never confused this sort

of gaming with full-blown commercial casino gaming. If asked, only Nevada and New Jersey would have been mentioned by most people (until recently) as States that allow commercial casinos.

All of the bills address the theoretical and practical problems of "charitable" gaming by limiting compact negotiations for Class III Indian gaming to those games which are played on a commercial, for-profit basis in the State. AGTOA strongly supports this limitation in order to solve one of the major problems with implementation of the 1988 Act. If States allow commercial casinos for non-Indians, tribes should be allowed to negotiate for the same rights. Absent such commercial activity, States should not be forced to accept such Indian-run enterprises within their borders.

In addition to addressing these aforementioned problems, the pending legislation also makes other changes to the Act that will strengthen its enforcement and reduce further controversy. The Hoagland, Torricelli and Solomon bills all expand the National Indian Gaming Commission to five members, adding two associate members who represent State officials. This expansion will insure that the Commission continues to balance the competing interests of the tribes and the States.

The Torricelli bill also extends provisions of federal law on currency reporting to gambling establishments on Indian lands, leveling the playing field and insuring that Indian-run establishments are not an attractive enclave for money-laundering activities.

The Torricelli bill also addresses tribes concerns regarding States' use of the 10th and 11th Constitutional amendment defenses. The bill resolves this issue by allowing the States to either participate in negotiations with tribes or opt out of such discussions, leaving it to the Department of Interior to propose a gaming scheme. AGTOA supports a comprehensive solution to all problems associated with Indian gaming. We believe the Torricelli bill provides such a solution, and would support clarification of the 10th and 11th Amendment issues provided that the problems experienced by the States and our industry are solved in the context of one package of amendments.

In conclusion, Mr. Chairman and Members of the Subcommittee, AGTOA believes the 1988 Act is salvageable, if the issues identified in this testimony are addressed and solved. We do not seek to prohibit gaming on Indian lands; we do insist on fair competition and a level playing field. We believe this was Congress' intention in 1988. It is now up to this Subcommittee and this Congress to make good on the promise of the Indian Gaming Regulatory Act.

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Mr. RICHARDSON. Before we move to Mr. Hickey, I will ask Mayor Jim Jones of Polson, Montana, to join this panel. I apologize for the tight quarters.

Mr. Hickey, please proceed.

STATEMENT OF JAMES JAY HICKEY

Mr. HICKEY. Thank you, Mr. Chairman.

The American Horse Council appreciates the opportunity to present this testimony to the subcommittee as it continues oversight hearings on the implementation of the Indian Gaming Regulatory Act. We hope our views will contribute to the further development by Congress of a fair and enforceable policy on gambling on Indian lands.

The American Horse Council is the national trade association for the horse industry. It includes 186 equine organizations representing all major associations of racetracks, breeder groups and horsemen organizations which collectively comprise the pari-mutuel horse racing industry.

Our individual members include owners, breeders, riders, drivers, trainers, veterinarians, farriers and other professionals whose livelihood depends on racing and the horse.

Throughout American history, the prohibition and regulation of gambling has largely been a function of the States. Generally the Federal Government has become involved only when a State could not solve a problem by itself. This is the case with gambling on Indian lands over which Congress has the ultimate responsibility and authority to legislate.

The American Horse Council was involved in the debates surrounding passage of the Indian Gaming Regulatory Act. It was difficult and contentious. The AHC ultimately agreed to that legislation for the reason that interests often agree to legislation; it was a compromise.

We understood the give-and-take that went into that Act. We thought we understood its purposes. But positions taken by some States, decisions rendered by some courts, and actions taken by some Tribes since the Act was passed do not square with what we believe it was intended to accomplish.

Commercial casinos are now operating on Reservations in States that have no casino gambling as we understand that term. At various times, Tribes have been offering slot machines and video games of chance, sometimes without a compact, and sometimes in States which do not permit them.

It is doubtful that any Member of Congress voting on the Act in 1988 believed that the existence of any form of Class III gambling in a State would open that State to all forms of Class III gambling on reservations.

It is doubtful that any Member of Congress voting on the Act in 1988 believed that the existence of limited charitable gaming in a State, so-called Las Vegas nights, would lead to the existence of commercial casinos.

The Act was intended to bring some certainty and predictability to this issue. It has not. Perhaps the only certain thing that you can say about the Act is that it has caused confusion and litigation in many quarters.

The AHC believes that the Act should be clarified to reflect the original intent of Congress. The term "such gaming" must be shown to refer to the specific type of game involved rather than continued as an open-ended definition.

The Act should recognize the right of a State to establish a public policy that does not permit high-stakes commercial casino gambling while still permitting limited forms of gambling for charitable purposes such as Las Vegas Night.

The Tribal-State Compact process should be clarified. The State "is not negotiating in bad faith" if it simply seeks to limit a Tribe's gambling to square with the State's public policy on gambling.

Finally, the Act should be clarified to provide that an Indian Tribe should not be allowed to take new lands into trust for gambling purposes. Permitting Tribes to acquire land outside their Reservation and offer gambling is an invitation to continued turmoil and lawsuits.

We support the bills introduced by Congressman Robert Torricelli, H.R. 2287, and by Congressman Peter Hoagland, H.R. 1624. The AHC believes the clarifications offered by these bills will cure many of the current deficiencies in the Act.

Without changes, gambling on Indian Reservations will continue to expand, with no regard for the laws or policies of the various States in which Reservations are located and conflict will continue.

We believe the Congress should not get caught up in legal gymnastics in the debate over gambling on Indian lands. Congress has the authority to legislate in this area and set limits.

We suggest that in any clarification of the Act, Congress must consider the significant public policy reasons for State gambling laws, the concerns of the Tribes, and other gaming interests, and directly address the specific jurisdictional and regulatory issues surrounding this emotional and important matter. Only by setting clear Federal parameters in this area can the chaos that has resulted be concluded.

Thank you, Mr. Chairman, for the opportunity to present our views.

Mr. RICHARDSON. Thank you very much for your testimony.

[Prepared statement of Mr. Hickey follows:]

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Statement of
James J. Hickey, Jr.
President
American Horse Council
before the
Subcommittee on Native American Affairs
House Committee on Natural Resources
June 25, 1993

The American Horse Council (AHC) appreciates the opportunity to present this testimony to the Subcommittee on Native American Affairs, House Committee on Natural Resources, as it continues oversight hearings on the implementation of the Indian Gaming Regulatory Act of 1988. We hope our views will contribute ultimately to the further development by Congress of a fair and enforceable policy on gambling on Indian lands.

The American Horse Council is the national trade association for the horse industry. It includes 186 equine organizations representing over 1 million horse owners and breeders who are involved in every facet of the horse business.

The U.S. horse industry is a very diverse $15.2 billion industry that employs hundreds of thousands. Horse owners and breeders spend about $13 billion in annual investment and maintenance costs for their horses. $200 million worth of horses are exported each year. Horse farms and training facilities provide green space, often in areas that are being threatened by encroaching urban areas.

Included among the organizations represented by the AHC are the major associations of race tracks, breeder groups and horsemen's organizations which collectively comprise the pari-mutuel horse racing industry. Our individual members include owners, breeders, riders, drivers, trainers, veterinarians, farriers and other professionals whose livelihood depends on racing and the horse.

It is on behalf of this pari-mutuel sport and business, a major segment of the American horse community, that we present our views on the matter of gambling on Indian lands.

THE PARI-MUTUEL RACING INDUSTRY

Parimutuel horse racing is legal in 43 states and involves the racing of Thoroughbreds, Standardbreds, Quarter Horses, Arabians, Appaloosas and Paints. Off-track and inter-track wagering is legal in 41 states. There are over 192 racetracks in the U.S. In 1990, 70 million people attended the races, wagering $14.3 billion and generating over $600 million in direct state and local revenue from parimutuel taxes, track licenses, occupational licenses, admission taxes and miscellaneous fees.

Although wagering on horse races is permitted in 43 states, there is an active horse business in all 50 states. In many, the cash contribution of the racing and breeding industry to local economies is dramatically large and the industry ranks among the state's most significant economic entities.

In California and New York, for example, horse and horse related businesses account for cash contributions to each state's economies which exceed $2 billion annually. In Florida, Illinois, New Jersey, Ohio, Pennsylvania, Kentucky, Maryland and Michigan, the economic impact has been estimated at or around $1 billion annually. The employment accounted for by horse racing businesses and farms in each of these states ranges from 10,000 to 80,000 jobs. Many other states, including Arizona, Oklahoma and Texas, have extremely large and active horse industries.

In every state that has allowed legalized wagering on horse racing, strict state oversight and regulation has accompanied its introduction and growth. In each state the pari-mutuel industry is regulated by an agency most commonly known as the state racing commission. Among commission prerogatives are the licensing of track and horse owners, trainers, jockeys, drivers, and all others involved in the pari-mutuel sport, and the promulgation and enforcement of the specific regulations under which the industry must operate. All matters pertaining to the operation of pari-mutuel racing flow through these agencies on behalf of the governors and state legislatures.

Over the years the states have consistently acted on the perceived need to closely regulate legal wagering and protect the public's interest in pari-mutuel sports. The actions of state legislatures and the racing commissions which carry out their policies have been predicated on the desire to (1) maintain the integrity of the events on which the public is allowed to wager; (2) oversee the state's tax-related interest in that wagering; (3) ensure that licensees meet specific standards of qualification; and (4) control any criminal activities which may associate with the wagering aspects of the sport.

FEDERAL AND STATE POLICIES ON GAMBLING

Gambling, including that conducted on horse races around the country, has always been an issue of concern to Congress and state governments. We therefore feel it is very important that this Committee and the Congress consider the reasons for the historically strong government oversight of gambling matters and their pertinence to the issues at hand.

It is our position now, and it was our position in 1988, that the traditional and purposeful policies of the federal government and the states to regulate gambling should be extended to gambling on Indian lands. This position is not lightly taken, nor is it an effort to prevent the entry and expansion of Native American groups into this activity. It is, rather, consistent with the dual goals of gambling regulation and fair enterprise that have characterized our gambling laws to date.

Throughout American history, the prohibition and regulation of gambling has largely been a function of the states. The only time that the federal government has become involved has been when a state could not solve a problem by itself. The federal government, however, has jurisdiction over gambling that occurs on federal enclaves, such as Indian reservations. Congress has the ultimate responsibility to legislate its limits.

Whenever a state authorizes the legalization of a form of gambling it has usually followed referendums, in which the people themselves have directly determined the policy for their state. The debate is generally very visible, highly emotional and wide-ranging. If approved, the gambling is subject to a wide array of limitations and controls, including stringent regulation, licensing standards, market-entry decisions and spacing limitations.

States differ in their criminal statutes on gambling, some making it a crime for and individual to place a bet, while others punish only the operator of the game. Some outlaw all gambling except that specifically authorized and others specifically prohibit certain forms.

The diversity of treatment reflects the fact that the populations of the states differ in their views on gambling. States that choose not to give legal sanction to gambling in some or all of its forms should not have those forms of gambling imposed upon them either by the federal government or another state. The proposition that states should determine their own gambling policies is consistent with the historical role played by the federal government.

Gambling is not a free-enterprise system in the sense that anyone can enter into it. It is closely regulated and protected

by the states for good reason. There is only so much revenue available for gambling and entertainment. Development of gambling beyond its limit is counterproductive.

For example, when New Jersey authorized casinos in Atlantic City, the loss in betting at New Jersey tracks attributed to the casinos was 34%. Three race tracks in the vicinity of these casinos have since closed. With the introduction of riverboat gambling in Illinois the Quad City Downs Track in East Moline has experienced a 40% loss in revenue.

INDIAN GAMING REGULATORY ACT OF 1988

Indian gaming legislation was first considered seriously in the 98th (1983-84) and 99th (1985-96) Congress. There were bills more favorable to the gaming interests considered, including one that limited Indian gaming to bingo and another that proposed a five year moratorium to study the issue. Each almost passed.

At that time, the tribes and the gaming interests both wanted legislation. There was a good deal of tension and litigation between the tribes and state authorities at that time. But in 1987, the Supreme Court tilted the scales in favor of the tribes with the Cabazon decision. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) This decision changed the politics. At that point there was more pressure on the states and the other gaming interests than the tribes to press for legislation.

The debate was very difficult and contentious. It was not simply a matter that involved Native Americans and their well-being. Nor was it an issue that affected only states with tribes or only states with high-stakes gambling. It involved a variety of interests, the tribes, the states, the federal government and the regulated gaming interests, and policies involving a highly emotional issue, gambling, and forced them together.

Because this issue involves sovereign nations, Indian tribes, and states it was, and is now, up to Congress to balance the rights, duties and responsibilities of all the parties. Congress attempted to strike such a balance when it passed the Indian Gaming Regulatory Act.

To regulate gaming on reservations, Congress established three categories of Indian gambling activities: Class I, which includes tribal ceremonial games and is left to the tribe to regulate; Class II, which includes bingo and related games and is regulated by the tribe and the federal National Indian Gaming Commission (NIGC); and Class III, which includes all other forms of gaming, primarily parimutuel racing and casino gaming, and is regulated by the state and the tribe under a negotiated tribal-state compact.

Section 11(d) of the Act provides that Class III gaming activities are lawful on Indian lands only if they are: 1) authorized by Tribal ordinance or resolution; 2) located in a State that permits "such gaming for any purpose by any person, organization, or entity;" and 3) conducted in conformance with a Tribal-state compact entered into by the Indian tribe and the state.

The Act requires any Class III gaming to be conducted pursuant to a tribal-state compact. The compact negotiation process was intended to reconcile and accommodate the different public policies between the states and the tribes. This process anticipated a negotiation between the tribe and the state and Act requires a good faith effort on the part of the state to reach an agreement. If a tribe believes the state has not negotiated in good faith, it can go to court for an order requiring the negotiations to resume. If an agreement is still not reached, the court may appoint a mediator to select the plan under which gambling is conducted.

The Act does not require that a compact be concluded or that every demand by a tribe be satisfied. It simply requires a good faith effort by the state to address tribal requests while attempting to reconcile those requests with the state's public policy towards gaming. In the process the legislative history of IGRA says that states may consider licensing issues, including days and hours of operation, wager and pot limits, types of wagers and the size and capacity of facilities. States may also consider the negative impact on existing gaming activities.

The AHC disagrees with the arguments put forth by some who have suggested that the purpose of the IGRA is to ensure the unlimited development of gambling on Indian lands. This position is not supported by the Act or its legislative history. The purpose of the Act is not to ensure that any form of gambling is permitted willy-nilly on tribal lands. Nor must a state simply acquiesce in any gambling simply because it might promote the economic development of tribes. Rather, the Act is intended to assist the development of gambling on Indian lands under an appropriate regulatory framework that satisfies the concerns, including the public policies of the states on gambling, Congress expressed when the Act was passed. In this way the economic opportunities such gambling can provide tribes will be protected.

The American Horse Council was involved in the debate surrounding passage of the Indian Gaming Regulatory Act. The AHC agreed to that legislation for the reasons that interests often agree to legislation: it was a compromise. We understand the give and take that went into the Act; we thought we understood its purpose. But positions taken by some states, decisions rendered by some courts and actions taken by some tribes since

the Act was passed do not square with what we believe the Act was intended to accomplish. This, of course, causes our industry great concern.

Commercial casinos are now operating on reservations in states that have no casino gambling, as we understand that term. Some tribes have been offering slot machines and video games of chance, often without a tribal-state compact and often in states that do not permit them.

In fact, many states, governors, attorneys general and law enforcement agencies, including the Department of Justice and U.S. Attorneys, have often appeared confused about this issue or reluctant to take action. Perhaps the only certain thing that you can say about the Indian Gaming Regulatory Act is that it has caused confusion and litigation in many quarters.

CONFUSING JUDICIAL INTERPRETATIONS

"Such Gaming" in Wisconsin

The clearest example of a court's misconstruction of the scope of games that must be negotiated involves the Chippewa tribes and the state of Wisconsin. Wisconsin law authorizes only on-track parimutuel wagering and a lottery. No other form of gambling is permitted in any way.

In November 1989, the Lac du Flambeau Chippewa tribe and the Sokaogon Chippewa Community asked the state to negotiate a compact covering casino games, including video gaming machines, roulette, slot machines, poker, craps and blackjack. The governor of Wisconsin asked his Attorney General for an opinion regarding the scope of gaming that might be permitted in Wisconsin. He concluded that Class III games, such as those the tribe sought to conduct, were prohibited in the state and not subject to negotiation. Based upon this opinion, the state refused to negotiate on any of the Class III gambling sought and the tribes filed a lawsuit alleging bad faith on the part of the state.

The U.S. District Court for the Western District of Wisconsin held, in effect, that unless a particular type of gambling is expressly prohibited, it is "permitted" in Wisconsin and must be negotiated. Lac du Flambeau Band of Superior Chippewa Indians v. Wisconsin, 770 F. Supp. 480 (W.D. Wis. 1991) Citing the state's "approval" of parimutuel racing and a lottery, the court concluded:

> ... the state is required to negotiate with [the tribes] over the inclusion in a tribal-state compact of any activity that includes the elements of prize, chance and consideration and that is not prohibited expressly by

the Wisconsin Constitution or state law.

In other words, simply because Wisconsin authorized a lottery and parimutuel racing, the court ruled that any form of gambling, including high-stakes commercial casino gambling, was open to negotiation under the Act with tribes. The court ordered Wisconsin to negotiate a compact with the tribes including these forms of gambling.

Wisconsin appealed this decision to the Eighth Circuit Court of Appeals and sixteen states filed an amicus brief in support. But the state failed to follow procedural rules and the appeal has been dismissed.

If this decision is followed by other courts, 34 states could conceivably have Indian casinos.

It is doubtful that any member of Congress voting on the IGRA believed that the existence of any form of Class III gaming in a state would open up that state to all forms of Class III gambling on reservations and force a state to accept such gambling. Rather Congress believed, as the statute says, the Act requires states to negotiate with tribes only for the particular form of Class III gambling that is legally authorized for some person, organization or entity. The Wisconsin decision is counter to the purposes of the Act.

If tribes are allowed to conduct gaming activities not legally authorized by a state, Congress' goal of consistency and uniformity cannot be realized.

"Such Gaming" in Charitable Gaming States

The question of what "such gaming" means has also been difficult to resolve in states that authorize "Las Vegas Nights." Only two states, Nevada and New Jersey, allow full-scale commercial casino gambling. But charitable gaming statutes in fifteen states permit non-profit organizations to raise money by conducting "Las Vegas Nights." As the name implies, the games offered at such events are the same or similar to those offered in Las Vegas and generally include blackjack, craps, roulette, cards, and similar games. The purpose is to allow these organizations a way to raise money for the event's charitable purposes. Churches, fraternal organizations, and volunteer associations use these events to raise funds.

There is seldom a problem because in each state there are stringent restrictions on the games to keep them small and ensure that they do not become commercial activities. For example, state regulations generally limit the number of times an organization may conduct such events, set out the types of games allowed, the number of tables, the hours of operation and the maxi-

mum payout. Finally, many states require that any payout be in scrip or merchandise, rather than cash.

For these reasons, these charitable gaming events seldom conflict with the state laws or policies against commercial gaming, policies that are generally set and resolved only after substantial public debate.

Nonetheless, one of the most troublesome and high-profile issues that has arisen under the Act involves what games are permitted in states that have "charitable gaming" statutes and whether the state may in good faith insist that a tribe adhere to limitations identical or similar to those set out in its charitable gaming laws.

This problem is most dramatically illustrated by the situation in Connecticut, which permits charitable gaming. In March 1989, the Mashantucket Pequot Tribe, located in Ledyard, asked the governor to negotiate a compact regarding the conduct of expanded gambling on its reservation. The tribe had offered bingo for some time. The state felt that it became clear during negotiations that the tribe wanted to construct and operate a commercial casino on its reservation. The state refused to negotiate the operation of a casino since casino gaming is illegal in Connecticut.

The tribe went to court and after lengthy litigation going all the way to the Supreme Court, the state was forced to allow the construction of a full-blown commercial casino in Ledyard, even though the operation of a commercial casino by a non-Indian would be a violation of the criminal law of Connecticut. Because Connecticut sanctions "Las Vegas Nights" by charitable organizations, the district court found this activity sufficiently similar to casino gambling as to amount to "such gaming" under the Act and require the state to negotiate with the tribe regarding the operation of a casino. Mashantucket Pequot Tribe v. Connecticut, 737 F. Supp. 169 (D.C. Conn. 1989); Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024 (2nd Cir. 1989), Cert. denied, 111 S. Ct. 1620 (1991).

Again, it is doubtful that any member of Congress voting on the IGRA believed that the existence of limited charitable gaming nights in a state would lead to the existence of commercial casinos.

Compact Process and Good Faith Negotiations

The Act requires any Class III gaming to be conducted pursuant to a tribal-state compact. This process anticipates a negotiation between the tribe and the state and requires a "good faith" effort on the part of the state to reach an agreement.

The Act does not require that a compact be concluded or that every demand by a tribe be satisfied. It simply requires a "good faith" effort by the state to address tribal requests while attempting to reconcile those requests with the state's public policy towards gaming.

Nonetheless, the Act does not specifically address the impact of a decision such as that in Wisconsin or charitable gaming statutes on the state's posture in compact negotiations. Those states that have attempted to impose restrictions similar to those included in a charitable gaming statute, for example, have met with stiff resistance and legal challenge from tribes. To date, we believe the states have been reluctant to impose charitable gaming limits on tribes because of a fear that the courts will find that they have not negotiated in "good faith" and in effect take the process out of their hands.

It was not the intent of Congress to force state to abrogate their public policy responsibilities with respect to the tribal-state compact process. It was intended to be a negotiation. Still decisions by the courts and pressures by tribes have put states on the defensive regarding what they can require.

New Lands into Trust

Section 20 of the Act concerns gaming on lands acquired after enactment of the IGRA, the Act provides that gambling shall not be allowed on lands acquired by the Secretary in trust for a tribe. There is a general exception that permits it if the Secretary confers with state and local officials and authorizes it but only if the Governor of the state concurs in this determination. This seems clear to us; the Governor has final authority, a "veto power" in effect, over a tribe's new taking lands into trust for gambling purposes. But even this has led to controversy in Iowa, Kansas, and Oregon.

The 1988 Act was intended to bring some certainty and predictability to this issue. Permitting tribes to seek land outside their reservations is an invitation to continued turmoil and lawsuits. Moreover, this provision violates the spirit of the Act which attempts to balance the rights of the tribes to use their lands without interference by the state with the state's concerns about controlling activities on non-reservation land, Allowing tribes to purchase land in metropolitan areas, have it taken into trust status and then erect gambling facilities tilts the scales even further towards the tribes against the states and the non-indian gaming industry.

The AHC supports a prohibition on taking non-contiguous lands into trust for gambling purposes.

STATE REACTION

Some states, because of the confusion surrounding this Act, have begun to take a hard line on this issue and in the negotiation process. Some have simply refused to negotiate and have raised constitutional defenses under the Tenth and Eleventh Amendments.

Several federal courts have held that the Eleventh Amendment to the Constitution protects a state from suit by a tribe alleging bad faith in the compact negotiation process and requesting that states be ordered to conclude compacts for Class III gambling. The Eleventh amendment prohibits suit against a state by a private party, by a foreign sovereign or, as some courts have held, by an Indian tribe. For example, the District Court in Oklahoma has dismissed a suit by the Ponca Tribe seeking an order that the state negotiate a compact for Class III gambling. The court held that the state's sovereign immunity under the Eleventh Amendment barred the suit and, in addition, that the IGRA constituted an unconstitutional interference with the state's sovereign contracting powers under the Tenth Amendment. This decision has been appealed by the tribe. Ponca Tribe of Oklahoma v. Oklahoma, CIV-92-988-T (W.D. Ok. September 9, 1992)

But a District Court in Florida refused to dismiss a suit against Florida by the Seminole tribe saying it did not violate the Eleventh Amendment. Seminole Tribe of Florida v. Florida, Case No. 91-6756-CIV-MARCUS, (D.C. So. Fla. 1991).

Thus, federal courts have ruled both ways on the Tenth and Eleventh Amendment defenses, some agreeing it is valid and others dismissing it.

STATE ASSOCIATION POSITIONS

In June 1992, the Western Governors Association asked Congress to clarify provisions of the IGRA, including the fact that a state that allows one form of Class III gaming should not open the door to all forms of gaming and the state control of off-reservation land for gaming purposes.

At the National Association of Attorneys General 1992 Summer meeting a resolution was adopted urging an amendment to the IGRA. The resolution stated:

> "Because of seeming ambiguity in federal law, there is a possibility of gaming taking place on Indian reservations beyond the scope of that generally allowed in states. This could result in years of litigation. The law should be "cleaned up" to reflect Congress' intent - that the same games be allowed on

reservations as are allowed within the state."

Finally, in an important action that shows the position of the governors with respect to the Act, on February 2, 1993, the National Governors' Association adopted a lengthy position seeking clarification of the IGRA in several enumerated respects.

CONCLUSION

The AHC and the pari-mutuel interests it represents do not unconditionally oppose the development of gambling on Indian lands. We do, however, oppose, and urge this Committee to consider, the ramifications of what we view as the uncontrolled expansion under IGRA as it is currently written and being interpreted.

The racing industry considers this gambling as more an issue of gambling on Indian lands and less as one of simply Indian gambling. We view it as competition for a limited wagering and entertainment dollar. The health of the racing industry, and the breeding farms and other jobs and activities it supports, depends on our ability to compete with these other forms of gambling and entertainment. We want to emphasize that as with all forms of gambling competition we are concerned about it, but prepared to compete with it. Gambling on Indian lands, however, currently offers special competitive problems. Not only does such gambling have built-in advantages, but some tribes seem to be going further than we believe the Act and state law permits. This, of course, causes us great concern.

The Act must be clarified with respect to these areas to reflect the original intent of Congress with respect to the "level playing field."

The term "such gaming" must be shown to refer to the specific type of game involved, rather than an open-ended definition as enunciated by the District Court in Wisconsin. The Act should also be amended to recognize the right of a state to establish a public policy which protects its citizens from the social consequences of high-stakes commercial gambling, without a referendum, while still permitting limited forms of gaming for charitable purposes, such as "Las Vegas Nights."

The cornerstone of the Act, the tribal-state compact process, must be clarified to indicate that a state is not negotiating in bad faith if it simply seeks to limit a tribe's gambling operation to square with the state's public policy on gambling.

Finally, it should be clarified that an Indian tribe should not be allowed to take new lands into trust for gambling

purposes.

We support the bills introduced by Congressman Robert Torricelli, H.R. 2287, and by Congressman Peter Hoagland, H.R. 1624, to clarify the IGRA. The AHC believes the changes offered by these bills will cure many of the current deficiencies of the Act.

Without changes to the IGRA gambling on Indian reservations will expand with no regard for the laws or policies of the various states in which reservations are located. It will also ultimately lead to the diminution of gambling on Indian lands as the states take actions, as they must and will, to compete with it.

We believe that Congress should not get caught up in legal gymnastics in the debate over gambling on Indian lands. Congress has the authority to legislate in this area and set limits. We suggest that in any clarification of the IGRA Congress must balance the significant public policy reasons for state gambling laws and the concerns of the tribes and directly address the specific jurisdictional and regulatory issues surrounding this emotional and important matter. Only by setting clear federal parameters in this area can the chaos that has resulted from the IGRA be concluded.

Mr. RICHARDSON. The Chair recognizes Mr. Joseph DeFrancis, President and CEO of the American Jockey Club.

STATEMENT OF JOSEPH A. DeFRANCIS

Mr. DEFRANCIS. Thank you, Mr. Chairman.

Good morning. I serve as Chairman of the Legislative Committee of the Thoroughbred Racing Associations and appear today on behalf of the associations.

The Thoroughbred Racing Associations is a trade organization comprising 49 member tracks in 18 States and it represents the leading thoroughbred racetracks in the United States. I also am President and CEO of the Maryland Jockey Club, which operates Pimlico and Laurel race courses in Maryland.

Since there are no tribal lands in Maryland, you may wonder why I am here. I am here to tell you that unless the committee and Congress act to close some of the loopholes that you have heard in testimony this morning, that the unrestrained explosion in Indian gaming will literally kill the horse industry in the United States.

I would like to take the remaining three-and-a-half minutes of my time to summarize why and to tell you why the horse industry is worth saving, why the committee on natural resources should be concerned about it.

Why the unrestrained explosion in Indian gaming will kill the industry is a fairly simple answer. You heard statistics earlier describing the total amount of money wagered in Indian casinos as $15 billion with a net within or gross revenue to the casinos of $1.5 billion, those numbers being projected to double in the next year. That exceeds the money wagered and the net money retained at horse racetracks in the United States today, and horse racing has been around in the United States since 1665.

The Maryland Jockey Club, the organization that I am privileged to be president of, is the oldest sporting organization in the United States; not just horse racing, all of sports. It was chartered in 1743 and has been in continuous existence ever since.

So racing has a long and proud tradition in the United States, but in just 5 short years, revenues from Indian gaming exceed revenues from a 200-year-old industry. The reason is fairly simple: Casino gaming. It is difficult for a horse racetrack to compete effectively with casino gaming.

Our wagering is pari-mutuel. The customers are wagering against each other, not against the house. We act like a stockbroker and take a commission on every dollar wagered. The net retention is about 9 percent. It varies from 5 to 9 percent from State to State.

So if a person goes to a racetrack and loses $100, the racetrack keeps $9. If a person goes to a casino and loses $100, the casino keeps the entire $100.

So as a consequence, it is very, very difficult for a racetrack to compete with a casino from the standpoint of marketing and attracting patrons. The reason that the horse industry is worth saving—and it goes to the issue Congressman Abercrombie raised earlier—is the question of jobs.

The existence of the horse racing industry supports a huge agribusiness of horse breeding. In Maryland, horse racing and breeding

together comprise the third largest industry in the state, behind only general agriculture and the Port of Baltimore.

It is the existence of racing that creates a market for horses and it is a huge agribusiness to breed and raise those horses. There are dozens of ancillary businesses that exist because horse racing is a sport that is still viable in the United States.

In Maryland, the existence of horse racing supports over 20,000 jobs, the existence of over 900 breeding farms that in Maryland result in the preservation of over a quarter of a million acres of open green space.

From a public policy land use perspective, it is one of the best ways to preserve open green space in an urban or suburban area.

To give you a brief frame of reference, when the football team left Baltimore in 1984, when the Baltimore Colts moved to Indianapolis, the State Department of Economic Development did a study on the economic impact of all sports on the economy of the State of Maryland. The purpose of the study was to show football was very important to the economy of Maryland and thus there was a public interest in having a team in Baltimore.

What the study showed back in 1984 was that all sports, thoroughbred and harness horse racing and breeding, professional football, baseball, basketball, hockey and soccer, contributed $1.2 billion to the economy of Maryland, but of that $1.2 billion, over 75 percent, $900 million, was contributed by horse racing and horse breeding—more than three times the combined impact of professional football, professional baseball, professional basketball, hockey and soccer.

So it is because of this multiplier impact that horse racing has a tremendous economic impact on the economy of the States in which it takes place.

In Maryland, it results in 20,000 jobs; Kentucky, over 80,000 jobs. So it is an industry worth saving, an industry that is worth the attention of this Congress.

I think the solutions are fairly straightforward. You have heard them discussed earlier. I will conclude my testimony now.

Thank you very much.

Mr. RICHARDSON. Thank you for being very articulate and convincing.

[Prepared statement of Mr. DeFrancis follows:]

STATEMENT OF

JOSEPH A. DeFRANCIS
PRESIDENT OF THE MARYLAND JOCKEY CLUB
ON BEHALF OF THE
THOROUGHBRED RACING ASSOCIATIONS
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

JUNE 25,1993

Good morning Mr. Chairman and members and staff of the Subcommittee. My name is Joseph A. DeFrancis. I serve as Chairman of the Legislative Committee of the Thoroughbred Racing Associations (TRA) and I am appearing today on behalf of this trade association. TRA has 49 member tracks in eighteen states representing the leading Thoroughbred racetracks in the United States. Churchill Downs, home of the Kentucky Derby, Pimlico, home of the Preakness in Maryland and Belmont Park in New York and home of the Belmont Stakes are just three of our more illustrious members. The states in which our member tracks are located in addition to the three states mentioned are Alabama, Arkansas, California, Delaware, Florida, Illinois, Louisiana, Michigan, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Oregon and Pennsylvania. The TRA was formed over 52 years ago to provide a unified voice for the Thoroughbred racing industry and to safeguard and improve the integrity of the sport. I am also President and Chief Executive Officer of the Maryland Jockey Club, the operators and owners of Pimlico and Laurel Race Courses.

Thoroughbred racing itself has a long history in this country dating back to at least 1665 when a New York governor sponsored racing meets at the Newmarket Track on Long Island. Wagering was a factor in the sport almost from the beginning, although at that time it was primarily between breeders and owners. In 1865 the pari-mutuel system was invented. For the first time it permitted a person to bet against other amateur bettors, rather than the professional bookmaker, who had been handling the wagering and usually held a clear advantage. The pari-mutuel system was first used in the Kentucky Derby of 1908 and has been successful ever since.

The essence of the pari-mutuel system is that bettors wager against each other instead of a bookmaker, or the "house". Of the total amount bet on a particular race, called the "handle", approximately 80% to 82% is returned to winning bettors; the rest, called the "takeout" is divided amng the state, the track, the breeders, and the owners in the form of purses. The amount that goes to the state varies from 0% to 5.96% and averages about 3.66%. This amount is in addition to federal and state income taxes paid by racetracks and their shareholders and fans, as well as horse owners, breeders, and trainers, and others employed in the industry. Studies have shown that there is a limit on what can be taken out and that the higher it is the less that is likely to be bet. In fact, a lower takeout can often produce more revenue to a state because it provides more money to the track for improvements and higher purses for horsemen, prompting better racing and more wagering.

At present, 43 states authorize pari-mutuel wagering on horse racing. In 1992 over

$11 billion was bet here in the United States on thoroughbreds and 2.7 billion on standardbreds (harness horses). Attendance at thoroughbred racetracks around the country was over 53 million people and when coupled with 16 million attendees at harness tracks makes horse racing the number two spectator sport in the country, behind major league baseball but ahead of football, basketball and even Disney World.

Purse monies distributed to owners of both thoroughbred and harness horses in 1990 exceeded 865 million dollars.

In 1990, the latest year for which government revenue figures are available, horse racing produced revenue of $623,839,806 to states from pari-mutuel taxes, track licenses, occupational licenses, breakage, admission taxes and miscellaneous fees. This included, for example $198,649,606 to California, over $194 million to New York, and $49,047,872 to Illinois.

Racetracks, of course, could not exist without horses and the breeding farms and owners that invest in the racehorse. Racing and breeding and the training farms and centers that support these activities constitute a large agri-business that employs hundreds of thousands of workers across the United States, many in unskilled positions who might otherwise be unemployable. These activities ensure open spaces in urban developments and support countless suppliers of feed, equipment, transportation, veterinary services and sales personnel. In my home state of Maryland, horse racing and breeding is the number three industry in the state.

In Illinois alone horse racing and breeding is responsible for over 40,000 jobs. In Kentucky there are just under 80,000 jobs connected with this agri-industry. In California and New York, horses and related businesses account for cash contributions to each state's economy which exceed $2 billion annually. I make these points to indicate the size of the U.S. horse racing industry and its importance to the economy in the several states.

It should be emphasized that the eighteen states mentioned previously in which there is thoroughbred racing with pari-mutual wagering have established governmental regulatory agencies that play a key role in what the industry members can do. These state legislatures and regulatory bodies control the racing market within their states by regulating, for example, the number of racing days allowed, the types of promotions that can be conducted, whether we race during the day or evening, the number of horses that we race, the number of races on a given day and most important the price of our product which is the amount of each betting dollar that is taken out for distribution to the state, the track, the horsemen, and the breeders.

The point of this analysis is to demonstrate that racing in the several states where it is conducted is highly regulated and tightly monitored. Racetracks under this type of strict regulation which inhibits and stifles entrepreneurial initiative cannot compete with other gambling entities who are not so regulated or restricted.

Franchises were granted and investments made by these track owners on the assumption that the state would regulate and limit entry into these markets by other gambling interests.

The TRA is concerned with the proliferation of other forms of gambling in the several states. Saturation of the gambling market will hurt the racing and breeding business. The following are examples of what has occurred:

* According to a study by Richard Thalheimer of the University of Louisville, when New Jersey authorized casinos in Atlantic City, the loss in New Jersey racetrack handle attributed to the casino competition was 34% in 1988.

* In the Delaware Valley within the immediate marketing area of the Atlantic City casinos we have seen the closing of Liberty Bell Park in Philadelphia, Brandywine Raceway in Delaware and it was just recently announced that Garden State Park will close at the end of this year. All due to the impact of the casino competition on pari-mutuel horse racing.

* Riverboat gambling in Illinois has caused the Quad City Downs track in East Moline, Illinois a 40% loss of revenues.

* Canterbury Downs racetrack outside Minneapolis-St. Paul has closed its doors primarily as a result of competition from Indian casinos, one such casino operation only three miles from the track. This caused the loss of 2,200 jobs.

I want to make clear that the TRA is not anti-Indian. We are, however, against unlimited gambling proliferation. The gambling market, like all markets, is finite. If it is saturated there will be tremendous economic fall out and loss.

In the State of California, some of our members tracks have worked with several of the tribes and have entered into agreements permitting simulcasting and betting on their reservations on the races. The terms of the contracts are no different on or off the reservations.

The TRA does and will oppose commercial casinos on Indian reservations since they are not permitted elsewhere in the state. Here again, it is the state authorities who are in the best position to evaluate the impact of alternate forms of gambling on existing markets like racing and breeding and are best able to evaluate the loss of jobs and investment by establishing competing gambling centers.

The TRA would like to see the IGRA amended to permit compact negotiations on only those games specifically allowed under state law. We would also like to see a prohibition on commercial casinos where the state policy specifies only charitable casino activity. In addition the TRA supports prohibiting Indian gambling on newly acquired lands after the date of enactment of IGRA in 1988 and restricting gambling activities only to those tribes federally recognized before the enactment of IGRA in 1988.

This concludes our prepared statement. I would be happy to respond to any questions you or the other subcommittee members may have.

Mr. RICHARDSON. The Chair recognizes Mr. Melvyn Bowman.

STATEMENT OF MELVYN R. BOWMAN

Mr. BOWMAN. Thank you for the privilege of testifying before your committee today. I am Melvyn Bowman, the President of the HBPA, an organization of horse owners and horse trainers and their employees who work on the back side of the racetrack or in the stable area.

HBPA has approximately 50,000 members and we operate in 29 affiliated divisions located in 24 different States in the United States where pari-mutuel racing is conducted.

In the industry, the horseman is a term that is a very definitive term. It is generally those people who put on the show as opposed to the racetrack operators, who provide the theater for the show. A great majority of the owners and trainers in the United States are members of the HBPA.

One of our most important functions as a trade organization is to negotiate the purses for owners to race for as a function of dealing with the takeout and sharing of that takeout with racetrack operators.

In addition to that, one of our significant activities is providing benevolence benefits for our members. In many cases, the only health benefits of the members are those provided by the HBPA.

The training of race horses is a very labor-intensive business. We generally use a rule of thumb that for every horse in training, it requires a groom to take care of three or no more than four horses. That does not carry along to all the ancillary occupations on the back side of the racetrack—the hotwalkers, the exercise boys, the jockeys, blacksmiths, vets and ancillary businesses that supply the feed and supplies which we consume to keep our horses in the best of condition.

We estimate there are 130,000 thoroughbred race horses operating in training in 1992 of which about 85,000 have started in one or more races during the year. The people who care for these race horses, for many, that is their only skill. They love what they do and would not think of working anyplace else.

If our industry is threatened by unregulated gaming, both on Indian lands and elsewhere, many employees of our people would have great difficulty finding another line of work.

There is a conception that horse owners are a very elite wealthy group of people. That conception is not proper because they are a very small part of our membership.

The great majority of our members are medium-income people who love to own and work with race horses. A lot of the stable operations are family operations where husband and wife and children all work collectively as a unit to take care of their horses.

Our only source of income in raising horses is the purse which we race for. That is generally a purse negotiated between the HBPA and the track operator. If a track goes out of business, it causes significant dislocation in our members' activities.

There are not many statistics about the effects of Indian gaming on horse racing except we can give you one where the information is pretty much complete, Canterbury Downs in Minnesota. It was formed in 1985. In 1988, it was a thriving business. In 1990, an

Indian casino operation opened within 3 or 3.5 miles of it. Now Canterbury Downs is silent and deserted.

We are members of the American Horse Council and we encourage this committee to look at the legal and legislative references and recommendations that the American Horse Council makes.

Thank you very much.

Mr. RICHARDSON. Thank you.

[Prepared statement of Mr. Bowman follows:]

TESTIMONY OF M. R. BOWMAN
PRESIDENT OF
NATIONAL H.B.P.A., INC.
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN
COMMITTEE ON NATURAL RESOURCES
U. S. HOUSE OF REPRESENTATIVES

June 25, 1993

Thank you for the opportunity to appear before you to present testimony on the Indian Gaming Regulatory Act. For the record, my name is Melvyn R. Bowman. I am the President of the National H.B.P.A., Inc. I am submitting this statement in that capacity for the National H.B.P.A., Inc.

The National H.B.P.A., Inc. is a national horsemen's organization comprised of approximately 50,000 owners and trainers in 29 affiliated divisions in the United States. The 29 organizations are located in 24 states where pari-mutuel betting on horse racing is conducted. The H.B.P.A. is generally recognized as the largest horsemen's organization in each state for contracts with race tracks for simulcasting under the 1978 Interstate Horse Racing Act. In addition, we sponsor through our affiliates benevolence programs to care for horsemen and employees in time of need.

In the equine industry, the term "horsemen" denotes owners and trainers of race horses as opposed to breeders and race track owners or employees.

The great majority of owners and trainers in states that conduct racing are members of the H.B.P.A.

One of the most important functions of the organization is to negotiate contracts with the race tracks on behalf of its owner/trainer members to determine the amount to go into purses from the wagering pool after statutory amounts are returned to the betting public as winning and paid to the state for taxes and other charges.

The testimony given herein concerns only the effect of Indian Gaming on thoroughbred horsemen involved in racing. Representatives from other sections of the thoroughbred industry will give testimony as to how such gaming has or will

affect the thoroughbred breeders and race tracks in the United States.

However, we would like to point out that the equine industry as a whole is a huge business in the United States. The size of the equine industry may be appreciated by facts about its impact in one state. In 1991, the Lexington, Kentucky, Chamber of Commerce commissioned an extensive report prepared by the University of Kentucky Center for Business and Economic Research on Understanding the Impact of the Equine Industry in Kentucky and the Central Bluegrass. Some of its reported statistics for the year 1989 are as follows:

1. $5.04 billion of the total output of the Kentucky economy can be attributed to the direct and indirect effects of the equine industry.

2. There were 79,820 equine-related jobs, being 4.59% of the total state employment.

3. Direct and indirect contributions to wages and salaries totalled $1.30 billion.

4. It is estimated that the equine industry has a $357.5 million effect on the quality of life each year.

These figures were only for one state. The cumulative effect of employment, wages, salaries and income from the many states involved in the equine industry is highly significant to national economy.

The training and racing of thoroughbred horses is very labor-intensive. The 50,000 horsemen members of the H.B.P.A. directly provide jobs for thousands of people such as grooms, hotwalkers, blacksmiths, veterinarians, exercise riders and jockeys. For example, one groom is needed for every three to four horses in training. There were approximately 130,000 thoroughbred horses in training in 1992. Many workers in this industry are marginally employable. They have extreme difficulty in finding replacement work when a race track discontinues live racing.

The 50,000 horsemen members of the H.B.P.A. indirectly provide employment for thousands of other people in related services such as training centers, horse transportation, seed, feed, hay and supplies, tack and saddlery, insurance, etc. Further, in addition to the agricultural segment of the equine industry and the race tracks themselves, it also supplies thousands of jobs in

related service areas in banking, advertising, photography, printing, video, publications, attorneys, accountants, bloodstock and sales agents, and tourism.

The great majority of the owner/trainer members of the H.B.P.A. are not wealthy. The wealthy few are of the focus of media attention. They are the small exception to the majority of horsemen. The rank and file members are generally medium-income people who love to own and work with race horses. Many owner/trainer stables are small family operations. Their employees are medium or lower income people. The care and training of thoroughbred horses demands long hours and frequently hard physical labor.

The sole, ultimate source of income from horse racing is from purse distribution at the race track. The amount of the purse distributed to the horsemen is directly related to the amount bet by the patrons at the track. A decline in attendance or demise of a race track is disaster to horsemen and the people they employ.

Horsemen are in direct competition with other industries for the entertainment dollar. They can accept fair competition. However, it is not fair to be forced to compete with Indian Gaming. The horsemen cannot win under the present Indian Gaming Regulatory Act ("I.G.R.A.") and other law resulting from it..

Because of the short time since the passage of the 1988 I.G.R.A., there are few statistics to confirm what all horsemen can see happening to race tracks wherever Indian Gaming comes in.

However, the demise of Canterbury Downs in Shakopee, Minnesota, is the obvious first of predictable race track disasters under the present law.

In 1988, Canterbury Downs was a going race track. It had a total attendance of 1,045,497 people and a handle of $120,957,693.00. The Minnesota Racing Commission issued 2,555 owners' licenses and 389 trainers' (including owner/trainer) license and 875 groom/hotwalkers' licenses.

In 1990, the Indian Gaming Casino opened at Mystic Lake, just three and one-half miles away from Canterbury Downs.

In 1992, the Minnesota Racing Commission issued 1,573 owners' licenses, 207 trainers' licenses and 282

groom/hotwalkers' licenses. The total attendance was down 394,804 people and the handle was down approximately 44% to $67,341,422.00. These figures include simulcasting which was not available in 1988.

By January 1, 1993, Canterbury Downs was closed. The Minnesota Racing Commission has issued no thoroughbred owner or trainer licenses this year. The race track which cost $74 million to construct in 1985 stands empty.

Moreover, according to a report entitled Minnesota Gaming, 1993, pari-mutuel racing revenues, including off-track betting, were $16.6 million in 1991. This ended when Canterbury Downs was closed at the end of 1992. (Minnesota Gaming, 1993, is produced by Minnesota Planning, an organization charged with developing a long-range policy for the State of Minnesota.)

Horsemen are also intently aware of the struggle of Prairie Meadows in Altoona, Iowa, to survive. It is still in operation. However, there is little hope for its survival when it must compete with the Indian casino approximately 50 miles away, which opened a few months ago. The Indians pay no taxes. They can afford extensive advertising, providing free bus service to the casino, and serve very inexpensive and sometimes free meals and entertainment to its patrons. Even though Keno is legal in Iowa, it is not permitted at the race track. Only pari-mutuel wagering is permitted. Prairie Meadows cannot compete with the slot machines, Keno, and other forms of gaming permitted the three Indian casinos in Iowa. Under the present legal structure, it is doubtful if Prairie Meadows will be able to survive against such unregulated competition.

State governors and legislators have begun to recognize their mistake in granting tax and other incentives to new industry to move into the state while neglecting long-established local businesses that were going through hard times. They have begun to recognize that the failure and economic disasters which follow the closing of long-established local businesses can far outweigh the benefits conferred by the new industries that have come in. According to the 1992 Annual Report of the Minnesota Racing Commission, the gross state product contribution of the racing industry and Canterbury Downs was over $100 million. While the Indian tribes and Minnesota may benefit from Indian gaming, it does so at the expense of a well-established equine industry which has been destroyed in that state.

The race horse industry is highly regulated by both the federal and state governments. The effect of Indian gaming amounts to de-regulated, casino gambling without the citizens of this country being allowed to decide if this is their desire. We believe that the citizens of this country would overwhelmingly oppose legislation which permits such wide-spread, untaxed and unregulated gaming.

The horsemen believe that the unfair advantage given to Indian Gaming will be destructive both to the horsemen and the hundreds of thousands of other people in the horse racing industry. It will be even more destructive to allow the proliferation of industry which pays no taxes to state and local government.

The Indian Gaming Regulatory Act must be amended and clarified as follows:

1. States must be granted the right to limit the types of gaming conducted on Indian lands.

The Act must be clarified to forestall interpretation by the courts and the Department of Interior that if any type of Class III gaming is permitted in a state, then all types of Class III gaming must be permitted at Indian-owned casinos.

2. The definition of Indian lands upon which gaming can be conducted must be changed to expand the authority of state governors to prevent detrimental impact on the economic well-being of the affected state as a whole and not merely on the "surrounding community".

Thoroughbred horsemen and their employees as well as the myriad of related services and industries would be devastated if Indian tribes were permitted to acquire lands for the purpose of offering any type of racing or wagering without regards to the effect on existing operations elsewhere in the state. In this day of rapid transportation, new or additional types of wagering in any part of a state can have great adverse effect throughout that state.

The gaming activities currently occurring or planned on Indian lands have undermined the economic viability and threatened to destroy the positive economic impact of the pari-mutuel racing industry. However, the economic impact will not be limited to the pari-mutuel racing industry. It will affect the economic well-being of the state as a whole.

3. The Act must be clarified to provide that charitable gaming allowed by a state would not allow Indian tribes to use commercial versions of those games. Class III gaming should be restricted to those games specifically authorized by state law and conducted in the state as part of a commercial, for-profit business enterprise.

4. The Act should be amended to write into law the regulations of the National Gaming Commission which classifies slot machines and video gaming devices as Class III devices under the control of state law.

5. The Act should limit gaming to lands that were part of federally recognized tribe reservations at the time of the I.G.R.A.'s enactment in 1988. The Act should prohibit gaming on lands which were taken into trust after the 1988 enactment.

6. Restrict gaming activities to only those tribes recognized before the enactment of the I.G.R.A.

7. Regulations should transfer the burden on the proponent to show that a state is acting in bad faith. The Act should be clarified to provide that a state is not negotiating in bad faith if it demands that the tribes conduct their gaming activities on the same basis as gaming permitted by state law.

On behalf of the H.B.P.A., let me thank you for your kind attention and consideration of this matter of utmost importance to all horsemen, their families and employees, and all members of the equine industry as a whole. You have our sincere appreciation.

Mr. RICHARDSON. The Chair recognizes Mr. William Bissett.

TESTIMONY OF WILLIAM J. BISSETT

Mr. BISSETT. Thank you, Mr. Chairman.

I am Bill Bissett, President of Sportsystem, Incorporated. I appear today on behalf of the American Greyhound Track Operators Association.

Our company is a major sports entertainment company which owns and operates nine racetracks in six States. The combined capital cost of our facilities totals over $100 million.

We employ 4,000 individuals, and in 1992 we paid in excess of $34 million in direct gaming taxes to States in which are our facilities are located.

Gaming has traditionally been regulated and controlled by various State authorities and each State carefully apportions those licenses out. They do so in order to grow profitable facilities that will create jobs and produce a stable revenue base for a State and a gaming facility.

It is a partnership. There is no absolute right to open a gaming facility within a State. A market that was once controlled by States is now basically out of control, however.

The State of Wisconsin approved a statewide referendum on parimutuel racing in 1987. As a consequence, the State set up a gaming authority to grant licenses. We have a track in that State that was granted a license in June of 1989. We built the track and opened it in 1990 with a construction cost of $17 million.

After the IGRA passed in 1988, the Tribes began to press for full-blown casinos on their lands in Wisconsin. The Lac du Flambeau Tribe sued the State of Wisconsin in May of 1990 alleging that the State failed to negotiate in good faith.

In September of 1991, a U.S. District Court of Wisconsin held that the State must negotiate with the Tribes to offer casino games. Indian casinos began to open almost immediately. In the fall of 1991, Fox Valley Greyhound started showing monthly declines of 40 percent. The gaming facilities were within 20 miles of that facility.

There are now 17 Indian casinos operating in Wisconsin, and for the last two years, Fox Valley Greyhound has lost $6 million. The future of that track, employees and the tax to the State of Wisconsin is in grave doubt. The track will most likely close July of this year.

Two other greyhound tracks competing directly with Indian casinos in that State face the same fate. That represents a $70 million investment in infrastructure and over 1,000 jobs.

In Arizona where there are 4,300 jobs associated with six parimutuel facilities, we have two greyhound tracks in that State who have paid $5 million plus in 1992 alone in State gaming taxes.

Illegal gaming on Indian lands has been a fact of life in Arizona for years. Various Tribes opened slot machine parlors with hundreds of machines without compacting with the State of Arizona. Slot machines are also illegal in the State of Arizona.

Under threat of a suit, the Governor of Arizona began to compact with Tribes this year and approved four contracts authorizing 250 slot machines apiece. Other Tribes sued the States, the States ap-

pointed a mediator who concluded that these tribes should be allowed to have up to 1,600 slot machines along with casino gaming tables.

The source of this activity was Arizona's Las Vegas Night provision which allowed charities to play low-stakes games on an occasional basis. If the current plan is adopted in Arizona, Tribes will have over 12,000 slot machines in operation, all in a State that has not approved casino gaming.

We don't expect you to stop gaming on all Indian land. We do, however, expect Congress to make sure that policies enacted by the Federal Government do not unfairly destroy our businesses. Congress has the power to put limits on or even prohibit all gaming on Indian lands. Now some five years after the passage of that Act, we believe it is time to amend the Act so as to provide a balance and fairness that is now missing.

Failure to provide this much-needed direction will ensure continued wasteful court suits, continued strife between States and Tribes, and the continued destruction of the pari-mutuel business.

I thank you for the opportunity to appear here today.

[Prepared statement of Mr. Bissett follows:]

TESTIMONY OF

WILLIAM J. BISSETT

ON BEHALF OF

THE

AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

June 25, 1993

I am William J. Bissett, President of Sportsystems, Incorporated, a subsidiary of the Delaware North Corporation. I am appearing today on behalf of the American Greyhound Track Operators Association (AGTOA). I have been actively involved in pari-mutuel racing for 10 years.

Delaware North Corporation is a major sports/entertainment company which owns and operates 9 dog tracks in 6 States. The combined capital cost of our facilities totals over $100 million. Our tracks employ over 4,000 individuals. In 1992, we paid direct gaming-related taxes in excess of $34 million to the States in which our facilities are located. This direct gaming tax payment does not include the broad range of income, wage, sales, real estate and other taxes paid by our facilities to the States and local communities in which we reside.

Testimony presented today to the Subcommittee by AGTOA's Washington Counsel describes the Association and its membership. Our Counsel's testimony also describes AGTOA's legal position on changes to the 1988 Indian Gaming Regulatory Act, or "IGRA" as it is known in shorthand form.

I want to move away from the legal discussion of Indian gaming and give you some "real world" examples of what competition from gaming on Indian lands has done to our business. I emphasize the word "competition," because in every sense of the word, we are in head-to-head competition with Indian gaming. The tribal-run or tribal-sponsored games are going after the exact same customers that our tracks seek to reach.

Gaming has traditionally been regulated and controlled by the various States, Mr. Chairman. States have rarely allowed unfettered access to gaming by any and all comers. Instead, each State apportions its racing or gaming licenses. For instance, the most recent States to allow pari-mutuel gaming -- Texas and Oklahoma -- each set strict limits on the number of horse racing licenses they would issue. Oklahoma allowed only one "class A" horse track within its borders; Texas allowed only three "class A" horse tracks. The competition for each license was fierce, and there were winners and losers.

Why do States so limit the number of gaming facilities within their borders? They do so in order to grow profitable facilities that will create jobs and produce a stable revenue base for both the State and the gaming facility. Bluntly, Mr. Chairman, there is rarely any absolute "right" to open a gaming facility within a State. It is into this tightly controlled market that gaming on Indian lands has dropped like a bombshell. A market that was controlled by the State is now basically out of

control because multiple Indian tribes also have a right to license facilities, too.

The States and the non-Indian gaming industry might be able to deal with such a licensing crazy quilt, but unfortunately, the tribes, for the most part, do not wish to compete with us on such a basis. They do not want to negotiate for Class III compacts in order to license the same games we play, i.e., dog racing. Instead, the tribes want to carve out an exclusive franchise to play games we are forbidden to play -- usually slot machines and other casino games.

All gaming is not created equal, Mr. Chairman. Studies have shown that when pari-mutuel facilities go toe-to-toe with casino gaming, the fall-off in a track's "handle" is between 40% to 100%. Casinos will close tracks, Mr. Chairman. If you doubt that, look at Canterbury Downs in Minnesota, or Sodrac in South Dakota.

We can fight State-authorized casinos or slot machines, or we can "join 'em" by persuading the State to allow our Tracks to put in slots or casinos, too. But with Indian gaming, there is no mechanism to lobby the State legislature, no Statewide referendum, no debate. A pari-mutuel facility which competes for a State license and sinks between $20-90 million of capital into constructing a state-of-the-art facility can suddenly find itself staring at an Indian casino across the street. That casino will pay no taxes, and can engage in gaming that is illegal any place else in the State.

I guarantee you that investors would not put millions of dollars into a track if they knew that this sort of "competition" would exist. It is blatantly unfair, and does grave violence to the ability of States to control the activities of their own citizens within their borders.

These are not idle concerns. I will give you two examples where gaming on Indian lands has wreaked havoc on the gaming industry and on the State.

The State of Wisconsin approved by Statewide referendum pari-mutuel dog racing in 1987. As a consequence, the State set up a mechanism to grant racing licenses. Our track, Fox Valley Greyhound Park in Kaukauna, Wisconsin, received its license in June of 1989, and we started construction in July of that year. After spending $17 million, our track opened in August, 1990.

The 11 Indian tribes in Wisconsin had long played high stakes bingo games. The Oneida tribe, for instance, had a commercial bingo hall in operation since 1976, just ten minutes away. After the court cases in the early 1980's ruled such gaming legal, Indian-run games began to proliferate.

Tribes then began to press for running full-blown casinos on their lands. After IGRA passed in 1988, these demands became more insistent. Negotiations between the tribes and the State moved forward in fits and starts, and the Lac du Flambeau Band of Lake Superior Chippewa Indians sued Wisconsin on May 23, 1990, alleging the State had failed to negotiate in "good faith". On September 1, 1991, the U.S. District Court for the Western District of Wisconsin held that the State must allow Indians to open casinos. While the legal decision turned on the specific nature of the gaming laws in Wisconsin, tribes and other commentators have unfortunately interpreted the case to mean that if a State allows one type of Class III gaming, in this case a State sponsored lottery, tribes are authorized to engage in all other types of Class III gaming.

Indian casinos began opening almost immediately. In the fall of 1991, Fox Valley Greyhound Park started showing monthly losses. There are now 17 Indian casinos operating in the State. For the last 2 years, Fox Valley has lost approximately $6 million. The future of the track, its tax payments to the State of Wisconsin, and the jobs for its 400 employees are in grave doubt. This track will more than likely close its doors in July. Two other greyhound tracks competing directly with Indian gaming face the same fate this year in Wisconsin.

In Arizona, Indian gaming has plunged the State into total political chaos. There are a total of 4,300 jobs associated with the six pari-mutuel horse and dog tracks operating within the State. Our greyhound tracks, Apache Greyhound Park and Phoenix Greyhound Park, paid a total of $5.20 million in taxes to the State of Arizona in 1992.

Illegal gambling on Indian lands has been a fact of life in Arizona for years. Various tribes opened slot machine parlors with hundreds of machines without any compact with the State of Arizona. Slot machines are illegal in Arizona. When the U.S. Attorney was finally persuaded to enforce federal law -- both IGRA and the Johnson Act -- in May, 1992 and she confiscated the illegal machines from the reservations, the tribes threatened violence.

Under threat of law suit, the Governor of Arizona agreed to allow four tribes to have 250 slot machines apiece. Other tribes then sued the State, and a court-appointed mediator concluded that these additional tribes should be allowed to have up to 1,600 slot machines each, along with casino gaming tables.

The source of all this activity was Arizona's "Las Vegas night" laws which allowed charities to play low-stakes games on an occasional basis. I will not attempt to chart for this Subcommittee the resulting confusion, the special session of the

State Legislature, the confused signals from the office of the Governor and the Department of the Interior. The controversy continues unabated. If the current plan is adopted, Arizona tribes may have over 12,000 slot machines in operation -- all in a State that does not allow casino gaming by anyone else. In the meantime, Phoenix Greyhound Park, which has been in operation since the 1950's and is the most profitable pari-mutuel track in Arizona, posted its first ever loss last month. We have laid off 35 employees since the beginning of this year as a direct result of gaming on Indian lands. More layoffs may follow.

The tribes dismiss such stories, arguing that our industry just wants to keep them out of a lucrative industry. We do not expect our competitors to protect our interests, and therefore these dismissals are to be expected. We don't expect Congress to stop all gaming on Indian lands. We will deal with fair and legitimate competition, and will either rise or fall based on our ability to offer a better product.

We do, however, expect Congress to make sure that policies enacted by the federal government do not unfairly destroy our businesses. Congress had the power in 1988 to put limits on, or even prohibit, all gaming on Indian lands. Now, some five years after the passage of the Act, it is time to amend the Act so as to provide the balance and fairness now missing. Failure to do so will insure continued wasteful court suits, continued strife between States and the tribes, and continued destruction of the pari-mutuel industry.

Thank you for this opportunity to appear before you today.

Mr. RICHARDSON. Thank you very much, Mr. Bissett. Let me welcome the Mayor of Polson on behalf of my colleague, Pat Williams. Congressman Williams has come to me as a result of the ongoing concerns on the Flathead Reservation and the effect that it has had on the City of Polson. The Indian Gaming Regulatory Act has caused some problems on the reservation. We would like to hear about it. My colleague, Pat Williams, couldn't be here today. I know he wanted to be, but he asked me, Mayor, to welcome you and make you feel at home, so please proceed and we look forward to your testimony.

STATEMENT OF HON. JAMES W. JONES

Mr. JONES. Thank you. Polson is one of five cities located within Lake County, Montana, and within the boundaries of the Flathead Indian Reservation. Flathead Reservation is unique in that it is an open Reservation occupied by Indians and non-Indians. A substantial majority are non-Indian. City and county governments provide government services for all Indians and non-Indians.

Under Montana law a portion of tax revenue which is 15 percent of gaming operations is distributed back to the local governments which depend on this revenue which amounts to two-thirds of that 15 percent. There are 36 non-tribal operators and 20 tribal operators. Indian Gaming Regulatory Act prohibits Class III gaming in the absence of a compact between the State and the Tribe.

At the present time, the State and Tribes has been unable to reach agreement and they are miles apart. The Tribe is asking for 500 machines, video gaming machines. The State law allows 20 total. Therefore, the City of Polson is losing revenue which it needs to fund the city government. The Indian Regulatory Act's requirement for compact negotiations simply doesn't work.

Congress needs to eliminate this ineffective process and pass a law that lays out all the rules. The law should not give anyone a competitive advantage. It should give the States and local governments the tax revenue from tribal and non-tribal gaming operations. It should give the Tribes their own revenue. The gambling limits and tax rates should be the same for all. It should not confer gambling jurisdiction to the Tribes over non-tribal members who have no say in tribal government. Also concerned is the hostility being created between Indians and non-Indians because of the failure of this compact negotiation.

The only way to end this hostility is for Congress to treat tribal and non-tribal operators the same, allow non-tribal governments a fair share of tax revenues considering the government services provided, and get the people that lost their jobs back to work. I thank you for the privilege of being here today, Mr. Chairman.

[Prepared statement of Mayor Jones follows:]

WRITTEN TESTIMONY OF JIM JONES, MAYOR OF THE CITY OF POLSON, MONTANA, BEFORE THE U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES, REGARDING THE INDIAN GAMING REGULATORY ACT OF 1988.

The Mayor and City Council of the City of Polson wish to express to the Subcommittee their deep sense of frustration over what the people of Polson, Montana, perceive to be the diminishment of their franchise as citizens of the United States and the State of Montana. As the elected officials of the City of Polson, we find ourselves burdened with the normal responsibilities associated with such service, but compounded by the increasing jurisdiction and financial claims of the Confederated Salish and Kootenai Tribes.

The State of Montana and the incorporated cities within, depend in part upon revenue derived from taxation of gambling activities in order to provide the services which our citizens, Tribal and non-Tribal, demand. We now face a serious financial crisis in fulfilling that responsibility because of the current impasse between the State of Montana and the Confederated Salish and Kootenai Tribes in negotiating a compact as required by the Indian Gaming Regulatory Act of 1988. Since no agreement has been reached, all tax revenue from gaming activities has ceased under the terms of the Act. As a result, we are unable to fund the very basic government services and provide for the health and welfare of our citizens, on a par with non-reservation cities within the State of Montana. This relegates the people residing within the City of Polson to second class citizenship. We resent that, and the people we serve resent that as well.

Projections indicate that gaming on Indian Reservations within the United States will exceed five billion dollars. Authorities agree that the revenue picture for local governments is bright, if gaming operations can proceed without the problems which are presently plaguing the system.

In many instances, revenues from taxes generated from gaming provides for a significant part of the budget for small incorporated towns such as Polson. In the fiscal year of 1991/1992 for instance, income generated by the City of Polson alone was $102,907.00 which comprised approximately 13.7% of the general fund revenue returns to the City of Polson by the State of Montana. The State of Montana returns approximately 65% of all gaming revenue to the local governments in which that revenue was generated. The current impasse between the State of Montana and the Confederated Salish and Kootenai Tribes ties up such tax revenues for the City of Polson and seriously inhibits our City's ability to meet the needs of its citizens.

The present gambling ban on the Reservation seriously affects not only government bodies such as the City of Polson, but also private citizens as well. Gaming operations provide significant

income to local business owners, Tribal and non-Tribal alike. Gaming operations provide greatly needed jobs and incomes in a State which is in the bottom 15% percent in the nation for per capita income. Rural cities such as Polson experience greater economic instability than do urban communities which have a considerably more diverse economic and tax base. Gaming operations provide needed economic stability.

Individual business owners are not the only individuals to experience the adverse affects of the ban on gaming operations. Not only is the income lost to these individuals, but also, needed jobs are lost causing higher unemployment in an area which can ill afford any such increases.

The Indian Gaming Regulatory Act of 1988 has a more profound impact upon reservations such as the Flathead Reservation than other reservations. "Open reservations", such as the Flathead Indian Reservation, have Tribal and non-Tribal members interacting with each other far more than in closed reservation systems. This close interaction within the exterior boundaries of the reservation between Tribal and non-Tribal members presents a unique situation not adequately addressed in the Indian Gaming Regulatory Act.

Tension levels increase with every situation which polarizes Tribal and non-Tribal entities. The present impasse in negotiations betwen the State of Montana and the Confederated Salish and Kootenai Tribes provides but one more issue which divides a reservation community such as Polson. The lack of agreement serves only to widen the polical gaps between Tribal and non-Tribal groups as each feels the other is using every opportunity, including the impasse, to exploit some advantage from the other.

Because of the unique situation present on an open reservation such as the Flathead Indian Reservation, the Indian Gaming Regulatory Act must address and more clearly define the roles of both the State and the Tribes to avoid current problems such as those presently facing the City of Polson. Furthermore, many non-Tribal communities, businesses, and individuals resent the "advantages" which Tribal gaming operations could gain over non-Tribal gaming operations. For instance, the Tribe wants higher gaming limits than for similar non-Indian gaming establishments which could very well be located immediately adjacent to the Tribal establishments. Higher limits would give Tribal establishments an obvious competitive advantage in attracting patrons away from similarly situated non-Indian gaming operations. In addition, non-Tribal gaming activities sponsored by religious and charitable institutions stand to lose funds for social programs if such preferences are granted to Tribal establishments in any compact reached between the State and the Tribe.

The Confederated Salish and Kootenai Tribes has a current membership of less than 3,000 people which represents less than

one-fifth of the population of Lake County. The Tribes, nevertheless, under the shield of sovereignty, have positioned themselves as the dominant economic power in the County and seeks to extract much higher benefits from a compact with the State which would inevitably grant them competitive advantage over the greater majority of non-Tribal members living within the exterior boundaries of this Reservation.

The current impasse in the gambling negotiations, coupled with the complicated jurisdictional problems which would arise in enforcing any compact, leads to the conclusion that the Federal Government has abdicated its responsibility toward the citizens of the City of Polson and all non-Tribal members within the exterior boundaries of the Flathead Indian Reservation. We fully recognize the reasons for the gambling negotiation impasse, the current posture of the Tribe in the process would create a market advantage to the Tribes and further deplete the tax revenues to local governments. To his credit, our Governor has stated that he cannot accept that.

Congress should enact new legislation which provides the following fundamental purposes: (1) Gambling legislation which places Tribal and non-Tribal operators on level ground. (2) Tax revenues from Tribal operators would be paid to the Tribe. Tax revenues from non-Tribal operators would be paid to State and local governments. Tax rates would be the same. (3) Tax revenues would be designated for legitimate government functions. (4) Tribal governments would oversee and regulate Tribal operators. State governments would oversee and regulate non-Tribal operators.

It is time for Congress to recognize that the Indian Gaming Regulatory Act is a failed piece of legislation. Congress needs to immediately remedy this failure by passing legislation which is equitable to Indian and non-Indian gaming operators alike, and which preserves the integrity of the tax revenues which support local government services. It is our fervent hope that our elected Representatives will come to our aid, and find a way to end the current impasse. We also urge you to find a long term solution to the ever increasing conflicts as the Tribe strives to dominate the political, social, and economic fabric of our community.

Respectfully submitted,

James W. Jones

James W. Jones, Mayor
City of Polson, Montana

DISTRIBUTION OF GAMING REVENUE
FY 1991 - 1992*

64.6% of gaming revenue is returned to local governments by the State

6.1% of gaming revenue is used by gaming division for administration

29.3% of gaming revenue is placed in the state general fund

During FY 1991/92 our community received the following:

Lake County	$ 55,531.00	2.9% of gen fund revenue returned by state
Polson	$102,907.00	13.7% " " "
Ronan	$ 44,315.00	11.9% " " "
St. Ignatius	$ 930.00	1.2% " " "
Total	$203,683.00	

*Note - no gaming revenue from June 25, 1992 to October 1992 due to shut down. No current revenue due to shut down.

These figures represent machine taxes, permit fees, and card table fees.

Mr. RICHARDSON. Thank you, Mayor. Let me ask the panelists, how have State lotteries, riverboat gaming, and gaming in towns in South Dakota and Colorado, affected horse racing?

Mr. DEFRANCIS. Mr. Chairman, maybe I could address that. In Maryland recently the State authorized keno wagering through its lottery. Keno is a form of casino gaming comparable to bingo. It began January 1. Since the institution of keno gaming in Maryland, our gross revenues had dropped about 13 or 14 percent. That is a very direct example since January 1 of 1993.

One of our real concerns about the unregulated expansion of Indian gaming is given the fact that so many States like Maryland are relying on lotteries, on keno, on various forms of gaming as a critical part of their revenue base, Maryland instituted a keno game in order to generate revenues to help meet an $800 million budget deficit that if unrestricted, unregulated Indian gaming comes in and competes now with the State, with the State lottery, with the State keno games, that the State will be forced for fiscal reasons to become more heavily involved in gaming, which will be more competition for the horse industry and quicken the demise of an industry that already is having some very serious problems.

Mr. RICHARDSON. Now, let me turn to some of the other panelists to answer this question. Before the sudden growth of Indian gaming, what other factors would you attribute to the decline in your industry, in horse racing? Were there mainly economic factors for that decline that some of you mentioned? By that, I mean the slower growth rates.

Mr. BISSETT. I think, Mr. Chairman, it is a combination of things. There is some indication that the economic conditions generally in the country recently have caused the business to decline. When you introduce a State lottery into the gaming operation of a State, that pulls away some revenue from pari-mutuel business. I think every time you introduce a new form of entertainment in a community that may pull some away, but I think those opportunities for competition we are able to deal with generally in a legislative forum or we can present an argument, for example, that maybe the legislature in a State needs to readdress the tax structure in that State given the additional competition. And we can maneuver in that forum to put our arguments forward.

One of the problems we are having with the growth of Indian gaming, frankly, is we don't have a forum in which to present those arguments. Indian gaming compacts are negotiated with governors in private without a lot of public input. We don't have a lot of chance to put in input. We are generally forced to deal with what is left behind. We don't have a place to present these arguments.

Mr. HICKEY. If I could also, for example, in racing, as the economy worsened in the 1980s there were less people that had sufficient funds to invest in race horses. Racing and breeding and the industry supports relies on outside investments. There were changes in the Tax Act of 1986 that impacted on that. All of that has resulted in the foal crops decreasing over the last number of years and less horses running, so for example where you might have had 10 or 11 horses a race in the early 1980s, you are down to six or seven. People like to bet on races where there are more horses available, so that would have an impact on it, but the point

that I want to answer there is what Mr. Bissett mentioned also is that we are prepared, where the State is going to have riverboat gambling or lotteries which are pretty much a fait accompli, we have an opportunity to go in and make the arguments to the States and they can make a public policy decision that, yes, they want to have riverboat gambling or, no, they don't, or they want to support the horse industry because of the agribusiness that it supports.

With this particular area we don't have that opportunity because of the court decisions and because of the decisions made under the Indian Gaming Regulatory Act. We have to come to you to do that, and that is why we are here this morning.

Mr. RICHARDSON. The statistics from *Gaming and Wagering Business* magazine from 1982 to 1991 suggested the horse racing industry nationally has been growing more slowly than other forms of gaming. Would you basically agree with that? Is that correct?

Mr. HICKEY. I will take a shot at that, and I don't feel comfortable in doing so, but I will say that as new forms of gambling come in, we may remain the same in terms of absolute dollars bet for income, but the percentage would go down. I can't begin to explain the discrepancies that were discussed this morning.

Mr. RICHARDSON. Well, the reason I ask this is because the same business magazine suggested that Indian gaming didn't start its rapid growth until 1989. My question is—and we all want a healthy horse racing industry—but I want to see what correlation there is between Indian gaming, the growth of Indian gaming and perhaps some of the slowness in your industry. Let's see if we can tie it together.

Mr. DILL. Mr. Chairman, if I could address your question in a somewhat different manner from the dog racing industry, there have been a number of different studies that have been produced that show when pari-mutuel facilities go head to head with casino facilities, whether they be on Indian lands or regulated through an agreement at the State level to do so, that the fall-off in track business is somewhere between 40 percent and 100 percent. I don't think there is any question that casino gambling, because of some of the matters that were talked about earlier, has an impact on pari-mutuels, and I guess at the risk of repeating ourselves, I would go back to the statement that Mr. Bissett made and that Mr. Hickey made, and that is as an industry we are not asking Congress to protect us from competition.

At a State level if a State decides to enter into a new form of gaming, our industries will make a decision whether to fight it, whether to join it, whether to try to get amendments to that provision to have slot machines of our own at a track. The difficulty with Indian gaming and the thing that I think Congress has got to focus on is that this is competition which literally comes whistling in out of thin air. Most track investors and operators who are brought into a State, and this goes back I guess to a question Mr. Abercrombie asked at the very end before he left, is what is wrong with allowing the Indians to play under State rules? The answer is, If that were to occur, that would cure a large number of the problems that currently exist in the Act where they do have different and preferential treatment vis-a-vis types of gaming. But a State gaming is not free enterprise. One cannot just conclude, "Gee,

let's go put up a horse track or a dog track next door." It is usually tightly controlled.

The difficulty with Indian gaming is if you are an investor. In Kansas, for instance, Kansas put up a combined horse and dog track facility outside of Kansas City which I believe cost somewhere around $90 million. I can assure you that the people that funded that track would not have done so if they were told oh, by the way, a year or so after you are open there may be a $50 million Indian casino that pops up next door. Hope you don't mind. That is not how the business works. So I guess what we are asking this committee to do is not to save us from the other types of competition, but to focus on the competition that has been created as a result of this Act and to bring back the balance.

Mr. RICHARDSON. The Chair recognizes the gentlelady from Oregon.

Ms. FURSE. Well, now I am a little confused, Mr. Dill, because you have said that you are not opposed to competition.

Mr. DILL. That is correct.

Ms. FURSE. What is the difference of the competition if somebody opens a dog track next to a racetrack? I am confused about this competition issue because it sounds to me as if you are worried about competition. As a lawyer I would ask you, Isn't it true that a State and a Tribe are different legal entities than is a horse racing establishment? In other words, it is not even. States have certain powers; Tribes have certain powers. But an industry does not have those same powers, and I am just confused about the competition issue. Could you explain that to me again.

Mr. DILL. Let me try to do that if I could, Congresswoman. In most States there is a limitation on racing licenses. In the State of Florida, for instance, which has some of the largest concentration of dog tracks, there is a State law which says that tracks cannot be located any closer than 35 miles of each other. The purpose of that is obvious. They want to give each track that is licensed by the State that has the imprimatur of the State placed upon it a fighting chance to make money. Now, if Florida were to decide to eliminate the spacing requirement, that would obviously be the source of debate within the State. The Florida tracks would decide whether or not they wanted to accept that proposal, fight that proposal or modify that proposal, and so the question of whether a track shows up next to another track or whether a casino shows up next to another track is really a matter of State law.

I am not suggesting to you that each and every one of our tracks would say that is fine, we don't care. What I am suggesting is they have an opportunity to basically address that problem in the context of the political system. You are absolutely correct—tracks, States, and Tribes are not the same. In fact, tracks are quite different than Indian Tribes and States. The difficulty with the current system is that what was supposed to be a balancing act—where the States would basically negotiate with Indian Tribes for compact, and they would be able to take into account their respective public policy issues—has become warped. Instead of having some sort of a balancing act where the States would basically be able to protect their own indigenous gaming enterprises, the States

are being forced to basically accept Indian gaming whenever and almost wherever the Indians want it.

In the State of Iowa, for instance, a Tribe from Nebraska that was headquartered in Nebraska that had its Reservation land in Nebraska decided it wanted to take land interest in Council Bluffs, Iowa. Why did they do that? Because, first of all, it was adjacent to a dog track which meant that they already had their econometric work done for them.

Second of all, Iowa, which is directly across the river from Omaha, Nebraska, had more lax gaming laws than Nebraska, and they wanted to tap into the Omaha–Council Bluffs SMSA. Very simple. It was an economic decision. We understand that. The problem is nobody else would necessarily be able to do that under Iowa law.

First of all, Iowa has casino gambling, but it is on river boats. They made a determination to try to protect the gaming industry within the State, and Indian gaming just issues a whole new set of problems into the picture, which causes economic difficulties.

Ms. FURSE. Thank you, Mr. Chairman.

Mr. RICHARDSON. I want to thank all the witnesses for appearing, especially the Mayor of Polson. I am sorry we are not going to have more time to continue this very interesting and good questioning.

The subcommittee will resume its hearing process on the Indian Gaming Regulatory Act in Green Bay, Wisconsin, on Sunday, and you are all invited to come. We will continue holding these intensive series of hearings hoping to make a decision soon on what we are going to do about the Act. This has been a very valuable hearing, and I want to commend all of you for your testimony. We will be in touch with the witnesses.

I ask unanimous consent that any relevant studies referred to by witnesses may be submitted for the record. Hearing no objection, it is so ordered.

Mr. DEFRANCIS. Briefly in response to the questions you raised, if you want a real good example of the impact of competition from Indian casinos on a horse track, there is one that is going to open up July 4 in Syracuse, New York, right down the road from Vernon Downs harness track. If you want to look two or three months from now to see what happens to Vernon Downs, that will give you a good example.

Mr. RICHARDSON. Thank you. The hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

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